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Court of Appeals

OF THE STATE OF NEW YORK.

ELIAS TSAKIRES, KALLIS CONSTANTINON, CHRIST LYMBOURIS, ANGELO CONSTANTINE, NICHOLAS RUSSOS, STELLA BELLAS, MARY YORWICK, JAMES LOIZIDES and LOUIS LOIZIDES, copartners trading under the name of THE COSMO CAFETERIA,
Plaintiffs-Respondents,

against

WILLIAM MESEVICH, President of the CAFETERIA EMPLOYEES UNION, LOCAL 302, an unincorporated association having more than seven members, individually and as President of said union,
Defendants-Appellants.

No. 3049
1939

Statement Under Rule 234.

This action was commenced by the service of the summons and complaint on defendants on May 3, 1939. Defendants joined issue by the service of an answer on May 16, 1939.

Plaintiffs appeared by David L. Delman. Defendants appeared by Boudin, Cohn & Glickstein.

The full names of the parties appear above. There has been no change of parties or of attorneys herein.

Notice of Appeal to Appellate Division.

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

ELIAS TSAKIRES, KALLIS CONSTANTINON, CHRIST LYMBOURIS, ANGELO CONSTANTINE, NICHOLAS RUSSOS, STELLA BELLAS, MARY YORWICK, JAMES LOIZIDES and LOUIS LOIZIDES, copartners trading under the name of THE COSMO CAFETERIA,

Plaintiffs,

against

WILLIAM MESEVICH, President of the CAFETERIA EMPLOYEES UNION, LOCAL 302, an unincorporated association having more than seven members, individually and as President of said union,

Defendants.

Sir:

PLEASE TAKE NOTICE that the defendants herein hereby appeal to the Appellate Division of the Supreme Court, First Department, from the final judgment herein, dated the 19th day of June, 1939, and entered in the office of the Clerk of the County of the Bronx on the 20th day of September, 1939, enjoining and restraining the defendants from picketing the plaintiffs' place of business, and that

this appeal is taken from the whole of said judgment and from each and every part thereof.

Dated: New York, September 21, 1939.

Yours, etc.,

BOUDIN, COHN & GLICKSTEIN,
Attorneys for Defendants,
Office & Post Office Address,
20 West 43rd Street,
Borough of Manhattan,
City of New York.

8

To:

DAVID L. DELMAN, Esq.,
Attorney for Plaintiffs,
261 Broadway,
New York City.

9

10 **Summons.**

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

ELIAS TSAKIRES, KALLIS CONSTANTINON, CHRIST LYMBOURIS, ANGELO CONSTANTINE, NICHOLAS RUSSOS, STELLA BELLAS, MARY YORWICK, JAMES LOIZIDES and LOUIS LOIZIDES, copartners trading under the name of THE COSMO-CAFETERIA,

Plaintiffs,

against

11 WILLIAM MESEVICH, President of the CAFETERIA EMPLOYEES UNION, LOCAL 302, an unincorporated association having more than seven members, individually and as President of said union,

Defendants.

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or
12 answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, New York, May 3, 1939.

DAVID L. DELMAN,
Attorney for Plaintiffs,
Office and Post Office Address,
261 Broadway,
Borough of Manhattan,
New York City.

13

Complaint.

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

[SAME TITLE.]

Plaintiffs, complaining of the defendants, by David L. Dehman, their attorney, respectfully allege:

FIRST: That the defendant Cafeteria Employees Union, Local 302, is a voluntary unincorporated association of more than seven members, and the defendant William Mesevich is its President. 14

SECOND: That the plaintiffs are partners and owners of the cafeteria known as The Cosmo Cafeteria, located at 726 East Fremont Avenue, Borough of Bronx, City of New York.

THIRD: That individuals under the control of the defendants have been picketing said plaintiffs' cafeteria, bearing false and misleading signs that tend to create the impression that the plaintiffs are unfair to organized labor, and also tend to create the impression in the eyes of the public 15 that those pickets were previously employed by the plaintiffs.

FOURTH: That those signs carried by the pickets are untrue and known to the defendants to be untrue, because there are no employees at the place of business of the plaintiffs and the plaintiffs are not unfair to organized labor.

FIFTH: That there is no "labor dispute" between the plaintiffs and any employees, and no employee of the plaintiffs has ceased working because of any dispute as to the rate of wages or any other acts of the plaintiffs.

SIXTH: That the plaintiffs are the sole owners of The Cosmo Cafeteria and do all the work in connection with said cafeteria without any outside assistance.

SEVENTH: That no strike has ever been called at the plaintiffs' place of business.

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EIGHTH: That the plaintiffs, as a result of the unlawful practices of the defendants, have suffered, suffer and will suffer irreparable damage, and they may find their business ruined without any adequate remedy at law, and must, therefore, seek this equitable relief in order to prevent the defendants from continuing their unlawful practices.

WHEREFORE, plaintiffs demand judgment against the defendants:

(a) That the defendants and their agents, servants and employees and those acting under their direction or control, be enjoined
18 permanently and during the pendency of this action from stationing any pickets at or near the plaintiffs' place of business as above described, and from interfering with the plaintiffs' customers who may seek to enter the plaintiffs' place of business or prevent by coercion or in any wise, any customers of the plaintiffs seeking to enter plaintiffs' place of business, or from interfering in any wise with the plaintiffs' business.

(b) That the defendants pay to the plaintiffs such damages as shall be proven at the trial or as to this Court may seem fair and adequate.

(c) That the plaintiffs have such other and further and different relief as to the Court may seem proper, together with the costs and disbursements of this action.

DAVID L. DEEMAN,
Attorney for Plaintiffs,
Office & P. O. Address,
261 Broadway, 20
Borough of Manhattan,
New York City.

(Verified May 3, 1939.)

Answer.

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

[SAME TITLE.] 21

The defendant William Mesevich, answering the complaint of the plaintiffs herein, by his attorneys, Boudin, Cohn & Glickstein, respectfully shows to this Honorable Court and alleges:

1. He denies each and every allegation contained in the paragraph or section of the said complaint marked or numbered "Second."

II. He denies each and every allegation contained in the paragraph or section of the said complaint marked or numbered "Third," except that he admits that the defendant union has been peacefully and lawfully picketing the cafeteria known as the Cosmo Cafeteria.

III. He denies each and every allegation contained in the paragraphs or sections of the said complaint marked or numbered "Fourth," "Fifth," "Sixth," and "Eighth."

FURTHER ANSWERING THE SAID COMPLAINT, AND AS
23 A FIRST SEPARATE AND COMPLETE DEFENSE THERETO, THE DEFENDANT ALLEGES:

IV. That the enterprise conducted and carried on under the name of Cosmo Cafeteria is the result of an arrangement, scheme, plan, design, and conspiracy on the part of the plaintiffs, and particularly on the part of the plaintiffs James Loizides and Louis Loizides to circumvent the laws of the State of New York by creating a fictitious partnership for the purpose of representing that they employ no help and thereby to gain immunity from the statutes of the State of New York with respect to labor and social legislation, and further, to avoid an employer's financial
24 responsibility as required by the laws of the State of New York, particularly those laws dealings with labor, workmen's compensation and unemployment insurance.

V. That the plaintiffs herein are not actually copartners but that the enterprise known as the Cosmo Cafeteria is owned, operated and controlled by the plaintiffs James Loizides and Louis Loizides.

VI. That by reason thereof, the plaintiffs have and are attempting to perpetrate a fraud, and

have come into a court of equity with unclean hands and are consequently entitled to no relief.

FURTHER ANSWERING THE SAID COMPLAINT, AND AS A SECOND, SEPARATE AND COMPLETE DEFENSE THERETO, THE DEFENDANT ALLEGES:

VII. That an actual controversy and labor dispute exists between the plaintiffs James Loizides and Louis Loizides and the defendant union, and that such controversy and labor dispute is concerned with, among other things, the question of social and economic conditions in the restaurant industry in the City of New York, including 26
standards of employment and working conditions.

VIII. That as the result of a concealed relationship of employer and employee existing between and among the plaintiffs, and as a result of the failure on the part of the plaintiffs James Loizides and Louis Loizides to comply with the statutes of the State of New York with respect to employment of labor, and as a result of the fraudulent plans scheme and design of the plaintiffs, said plaintiffs are enabled to unfairly compete with enterprises of a similar kind and nature and to undermine conditions of labor regulated by the statutes of the State of New York and social and economic conditions and to thereby create chaos 27
and unemployment in the restaurant industry.

FURTHER ANSWERING THE SAID COMPLAINT, AND AS A THIRD, SEPARATE AND COMPLETE DEFENSE THERETO, THE DEFENDANT ALLEGES:

IX. That the dispute between the plaintiffs and the defendant is concerned with terms and conditions of employment and concerns the association

or representation of persons in fixing, negotiating, maintaining, changing, or scheming to arrange terms or conditions of employment and concerns employment relations.

X. That by reason thereof the within action involves a labor dispute within Section 876-a of the Civil Practice Act.

XI. That the complaint herein fails to comply with said Section 876-a of the Civil Practice Act and by reason thereof is insufficient and should be dismissed.

29

FURTHER ANSWERING THE SAID COMPLAINT, AND AS A FOURTH, SEPARATE AND COMPLETE DEFENSE THERETO, SAID DEFENDANT ALLEGES:

XII. That the plaintiffs herein have not sought or in fact negotiated for the settlement of the labor dispute herein in good faith and have made no bona fide efforts to effect such settlement, and in fact have not made every reasonable effort to settle the dispute either by negotiation or with the aid of any machinery or mediation provided for by law.

WHEREFORE, said defendant demands judgment
30 herein dismissing the complaint, together with the costs and disbursements of this action.

BOUDIN, COHN & GLICKSTEIN,
Attorneys for Defendant William Mesevich,
Office & P. O. Address
20 West 43rd Street,
Borough of Manhattan,
City of New York.

(Verified May 16, 1939.)

31

Plaintiffs' Proposed Findings.

SUPREME COURT

OF THE STATE OF NEW YORK.

COUNTY OF BRONX.

[SAME TITLE.]

The above entitled action having duly come on to be heard before me at a Special Term for Trials of this Court, held in and for the County of the Bronx, on the 21st day of June, 1939, and the plaintiffs having appeared by David L. Delman, Esq., 32
their attorney, and the defendants having appeared by Boudin, Cohn & Glickstein, Esqs. (L. B. Boudin, of counsel) and the evidence of both sides having been adduced, and due deliberation having been had thereon, and after hearing David L. Delman, Esq., attorney for the plaintiffs, and Boudin, Cohn & Glickstein, Esqs., attorneys for the defendants, I do hereby find and decide as follows:

FINDINGS OF FACT.

FIRST: That the defendant Cafeteria Employees Union, Local 302, is a voluntary unincorporated association of more than seven members, and the defendant William Mesevich is its President. 33

Found—T. A. L., J. S. C.

SECOND: That the plaintiffs are partners and owners of the cafeteria known as The Cosmo Cafeteria, located at 726 East Tremont Avenue, Borough of Bronx, City of New York.

Found—T. A. L., J. S. C.

34 *Plaintiffs' Proposed Findings.*

THIRD: That the partnership formed by the plaintiffs is a valid partnership.

Found—T. A. L., J. S. C.

FOURTH: That individuals under the control of the defendants have been picketing said plaintiffs' cafeteria, bearing false and misleading signs that tend to create the impression that the plaintiffs are unfair to organized labor, and also tend to create the impression in the eyes of the public that these pickets were previously employed by the plaintiffs. Said picketing began on or about
35 April 14, 1939.

Found—T. A. L., J. S. C.

FIFTH: That those signs carried by the pickets are untrue and known to the defendants to be untrue, because there are no employees at the place of business of the plaintiffs and the plaintiffs are not unfair to organized labor.

Found—T. A. L., J. S. C.

SIXTH: That there is no "labor dispute" between the plaintiffs and any employees, or between the plaintiffs and the defendants, within the purview of Section 876-a of the Civil Practice Act, and
36 no employee of the plaintiffs has ceased working because of any dispute as to the rate of wages or any other acts of the plaintiffs.

Found—T. A. L., J. S. C.

SEVENTH: That the plaintiffs are the sole owners of The Cosmo Cafeteria and do all the work in connection with said cafeteria without any outside assistance.

Found—T. A. L., J. S. C.

EIGHTH: That no strike has ever been called at the plaintiffs' place of business.

Found—T. A. L., J. S. C.

NINTH: That the plaintiffs, as a result of the unlawful practices of the defendants, and the individuals under their control, have suffered damage, and unless the defendants are restrained from continuing their unlawful practices, the plaintiffs would suffer irreparable damage and may find their business ruined without any adequate remedy at law.

Found—T. A. L., J. S. C.

TENTH: That the pickets in front of plaintiffs' place of business approached prospective customers of the plaintiffs and told them that the plaintiffs' restaurant was giving bad food, and that there was a strike in the plaintiffs' restaurant. That said pickets insulted customers of the plaintiffs, who were about to enter the said restaurant of the plaintiffs.

Found—T. A. L., J. S. C.

ELEVENTH: That the said pickets directed customers about to enter the plaintiffs' place of business to other restaurants.

Found—T. A. L., J. S. C.

TWELFTH: That the partnership herein was formed on or about April 22, 1939, and all the plaintiffs signed the partnership agreement.

Found—T. A. L., J. S. C.

THIRTEENTH: That a certificate doing business as The Cosmo Cafeteria was duly filed by the plaintiffs in the office of the County Clerk of the County of Bronx.

Found—T. A. L., J. S. C.

CONCLUSIONS OF LAW.

1. That the plaintiffs are entitled to a permanent injunction, restraining and enjoining the defendants and their agents, servants and employees and those acting under their direction or control, from stationing any pickets at or near the plaintiffs' place of business at 726 East Tremont Avenue, Borough of the Bronx, City of New York, and from interfering with the plaintiffs' customers who may seek to enter their place of business, or to prevent by coercion or otherwise any customers of the plaintiffs seeking to enter plaintiffs' place of business, and from interfering in any other wise with the plaintiffs' business.

Found—T. A. L., J. S. C.

2. That the plaintiffs are entitled to the costs and legal disbursements of this action.

Refused—T. A. L., J. S. C.

3. Let a judgment be entered accordingly.

Found—T. A. L., J. S. C.

Dated, New York, June , 1939.

J. S. C.

43

Defendants' Proposed Findings.

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

[SAME TITLE.]

The above entitled action having duly come on to be heard before me at a Special Term for Trials of this Court, held in and for the County of the Bronx, on the 21st day of June, 1939, and the plaintiffs having appeared by David L. Delman, Esq., 44
their attorney, and the defendant having appeared by Boudin, Cohn & Glickstein, Esqs., his attorneys, Louis B. Boudin and Irving R. Feinberg, of counsel, and the evidence of both sides having been adduced, and due deliberation having been had thereon, I do hereby find as follows:

FINDINGS OF FACT.

1. That the defendant Cafeteria Employees Union, Local 302, is a voluntary unincorporated association, consisting of a labor union and is affiliated with the American Federation of Labor, and the defendant William Mesevich is the president thereof. 45

Found—T. A. L., J. S. C.

2. That the Cafeteria Employees Union, Local 302, is composed of and has jurisdiction over men and women employed in the cafeteria industry in the City of New York.

Found—T. A. L., J. S. C.

46 *Defendant's Proposed Findings.*

3. That approximately three years ago, the plaintiff Louis Loizides opened a cafeteria at No. 726 East Tremont Avenue, in the Borough of Bronx, City of New York, and personally conducted and owned said cafeteria from said time until April 22, 1939.

Found—T. A. L., J. S. C.

4. That upon the opening of said cafeteria approximately three years ago, plaintiff Louis Loizides took an eight-year lease for said premises in his own name; that the lease for said premises still
47 continues in the name of said Louis Loizides and has not been assigned to any other person.

Refused—T. A. L., J. S. C.

5. That during said period, from approximately three years ago to April 22, 1939, said cafeteria was owned and operated by Louis Loizides under the trade name of The Cosmo Cafeteria.

Found—T. A. L., J. S. C.

6. That the plaintiffs herein have been employed in said The Cosmo Cafeteria for various periods prior to April 22, 1939, which periods vary from three weeks to three years; and that some of
48 the plaintiffs herein were employed by said Louis Loizides continuously from the date of the opening of said cafeteria.

Refused—T. A. L., J. S. C.

7. That prior to April 14, 1939, plaintiff Louis Loizides was approached by a representative of the Cafeteria Employees Union, Local 302, and requested to employ union help; that said Louis

Loizides refused to discuss the question of employing union help with the representative of the union and refused to deal or negotiate with the union and thereby a dispute arose between the plaintiff Louis Loizides and the defendant union.

Refused—T. A. L., J. S. C.

8. That by reason of said dispute and on or about the 14th day of April, 1939, a picket line was established by the Cafeteria Employees Union, Local 302, in front of The Cosmo Cafeteria; and that said system of picketing consisted of one person walking to and fro in front of said cafe- 50
teria.

Found—T. A. L., J. S. C.

9. That at no time did more than one person picket in front of The Cosmo Cafeteria.

Found—T. A. L., J. S. C.

10. That the picketing of The Cosmo Cafeteria was at all times orderly and peaceful.

Found—T. A. L., J. S. C.

11. That no acts of violence have been threatened or committed by the defendant union. 51

Found—T. A. L., J. S. C.

12. That the plaintiffs performed various duties in said cafeteria, including the duties of countermen, chefs, kitchenmen, dishwashers, busboys, waiters, waitresses, etc., during the periods of their employment prior to April 22, 1939, and continued to perform the same duties after said date and until the date of trial.

Refused—T. A. L., J. S. C.

52 *Defendant's Proposed Findings.*

13. That on or about the 22nd day of April, 1939, the plaintiff Louis Loizides and the remaining plaintiffs herein, being the employees in The Cosmo Cafeteria, signed a paper writing purporting to be a partnership agreement; that the arrangement so formed was a fictitious arrangement.

Refused—T. A. L., J. S. C.

14. That none of the plaintiffs herein were or are of sufficient financial ability to pay for their alleged share in said partnership and have no reasonable expectation of being able to do so within
53 or at the expiration of one year thereafter.

Refused—T. A. L., J. S. C.

15. That said arrangement among the plaintiffs was the result of a conspiracy on the part of the plaintiff Louis Loizides to circumvent the laws of the State of New York for the purpose of representing that he employs no help, and thereby to gain immunity from the laws of the State of New York with respect to labor unions, social legislation, workmen's compensation and unemployment insurance.

Refused—T. A. L., J. S. C.

54 16. That the plaintiffs are not actually copartners; that the relationship of employer and employee exists among the plaintiffs.

Refused—T. A. L., J. S. C.

17. That the said arrangement among the plaintiffs was entered into for the purpose of avoiding unionization of The Cosmo Cafeteria.

Refused—T. A. L., J. S. C.

18. The said arrangement among the plaintiffs was entered into for the purpose of applying to this Court for an injunction restraining the defendant union from picketing The Cosmo Cafeteria.

Refused—T. A. L., J. S. C.

19. That the plaintiffs herein, with the exception of the plaintiff Louis Loizides, have obtained no permit from the Board of Health of the City of New York, permitting them to conduct and operate a restaurant or cafeteria, but that the only permit obtained from the Board of Health 56
was that obtained by the plaintiff Louis Loizides prior to April 14, 1939, and that said permit has not been assigned by the plaintiff Louis Loizides to the other plaintiffs.

Refused—T. A. L., J. S. C.

20. That all of the fixtures and property of The Cosmo Cafeteria are owned by and remain in the name of the plaintiff Louis Loizides; that the title to these fixtures has not passed to the remaining plaintiffs.

Refused—T. A. L., J. S. C.

21. That the plaintiff James Loizides is the 57
brother of the plaintiff Louis Loizides.

Refused—T. A. L., J. S. C.

22. That upon the execution of said arrangement no money was invested in the business of The Cosmo Cafeteria by any of the plaintiffs, and that the only money or property invested in said business was that originally invested by the plain-

tiff Louis Loizides on the opening of said cafeteria three years ago.

Refused—T. A. L., J. S. C.

23. That upon the execution of said arrangement, no money was paid by any of the remaining plaintiffs herein to the plaintiff Louis Loizides, by reason thereof, nor has any money been paid since.

Refused—T. A. L., J. S. C.

24. That after the execution of said arrangement, the plaintiffs herein continued to perform
59 the same functions and duties in The Cosmo Cafeteria which they had previously performed.

Refused—T. A. L., J. S. C.

25. That after the execution of said arrangement, the plaintiffs continued to receive weekly from The Cosmo Cafeteria the same sums of money which they had received weekly prior to April 22, 1939.

Refused—T. A. L., J. S. C.

26. That no new bank account was opened by The Cosmo Cafeteria until June 19, 1939, on which date the old bank account, standing in the name of
60 Louis Loizides, was transferred to the name of The Cosmo Cafeteria.

Refused—T. A. L., J. S. C.

27. That the plaintiffs herein carry no workmen's compensation insurance.

Found—T. A. L., J. S. C.

Defendant's Proposed Findings. 61

28. That the plaintiffs herein pay no social security taxes.

Found—T. A. L., J. S. C.

29. That the plaintiffs herein pay no unemployment insurance taxes.

Found—T. A. L., J. S. C.

30. That the public officers charged with the duty to protect the property of the plaintiffs and of The Cosmo Cafeteria have been able to furnish adequate protection to said property. 62

Refused—T. A. L., J. S. C.

31. That the picket on the picket line in front of The Cosmo Cafeteria has been instructed by the defendant union not to address or to accost any member of the public or any patron of The Cosmo Cafeteria, but merely to walk to and fro without making any oral statements.

Found—T. A. L., J. S. C.

32. The plaintiffs herein have refused to discuss this dispute with the defendant union and have refused to discuss with the union the maintenance of union conditions of employment in The Cosmo Cafeteria. 63

Refused—T. A. L., J. S. C.

33. That the plaintiffs have made no reasonable efforts to settle the dispute with the defendant either by negotiation or with the aid of the machinery of mediation and voluntary arbitration provided for by law.

Refused—T. A. L., J. S. C.

64 *Defendant's Proposed Findings.*

34. That no unlawful acts or any breach of a contract, not contrary to public policy, have been threatened or committed, and no such acts or breach will be executed if not restrained.

Refused—T. A. L., J. S. C.

35. That no substantial and irreparable injury to the plaintiffs' property will follow if the relief requested is not granted.

Refused—T. A. L., J. S. C.

36. That the dispute herein concerns terms and
65 conditions of employment and concerns employment relations.

Refused—T. A. L., J. S. C.

37. That the dispute herein arises out of the respective interests of employer and employee.

Refused—T. A. L., J. S. C.

38. That the plaintiffs herein are attempting to circumvent the provisions of the laws of the State of New York and specifically those laws relating to labor disputes.

Refused—T. A. L., J. S. C.

66

CONCLUSIONS OF LAW.

1. That the dispute between the plaintiffs and the defendant is a labor dispute within the meaning of Section 876-a of the Civil Practice Act.

Refused—T. A. L., J. S. C.

2. That the picketing conducted by the defendant union is lawful as an incident of a labor di-

pute between the plaintiffs and the defendant, and is carried on for the purpose of raising labor standards in the cafeteria industry and in the City of New York, and of installing in the place of business conducted by the plaintiff Louis Loizides union standards and conditions of work.

Refused—T. A. L., J. S. C.

3. That the defendant is entitled to an order dismissing the complaint herein with costs.

Refused—T. A. L., J. S. C.

4. I hereby direct that judgment be entered 68
accordingly.

Refused—T. A. L., J. S. C.

Dated, New York, June , 1939.

Justice of the Supreme Court
of the State of New York.

Decision.

SUPREME COURT 69

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

[SAME TITLE.]

The above entitled action having duly come on to be heard before me at a Special Term for Trials of this Court, held in and for the County of the

Bronx on the 21st day of June, 1939, and the plaintiffs having appeared by David L. Delman, Esq., their attorney, and the defendants having appeared by Boudin, Cohn & Glickstein, Esqs. (L. B. Boudin, of counsel) and the evidence of both sides having been adduced, and due deliberation having been had thereon, and after hearing David L. Delman, Esq., attorney for the plaintiffs, and Boudin, Cohn & Glickstein, Esqs., attorneys for the defendants, I do hereby find and decide as follows:

FINDINGS OF FACT.

FIRST: That the defendant Cafeteria Employees Union, Local 302, is a voluntary unincorporated association of more than seven members, and the defendant William Mesevich is its President.

SECOND: That the plaintiffs are partners and owners of the cafeteria known as The Cosmo Cafeteria, located at 726 East Tremont Avenue, Borough of Bronx, City of New York.

THIRD: That the partnership formed by the plaintiffs is a valid partnership.

FOURTH: That individuals under the control of the defendants have been picketing said plaintiffs' cafeteria, bearing false and misleading signs that tend to create the impression that the plaintiffs are unfair to organized labor, and also tend to create the impression in the eyes of the public that these pickets were previously employed by the plaintiffs. Said picketing began on or about April 14, 1939.

FIFTH: That those signs carried by the picket are untrue and known to the defendants to be un-

true, because there are no employees at the place of business of the plaintiffs and the plaintiffs are not unfair to organized labor.

SIXTH: That there is no "labor dispute" between the plaintiffs and any employees, or between the plaintiffs and the defendants, within the purview of Section 876-a of the Civil Practice Act, and no employee of the plaintiffs has ceased working because of any dispute as to the rate of wages or any other acts of the plaintiffs.

SEVENTH: That the plaintiffs are the sole owners of The Cosmo Cafeteria and do all the work 74
in connection with said cafeteria without any outside assistance.

EIGHTH: That no strike has ever been called at the plaintiffs' place of business.

NINTH: That the plaintiffs, as a result of the unlawful practices of the defendants, and the individuals under their control, have suffered damage, and unless the defendants are restrained from continuing their unlawful practices, the plaintiffs would suffer irreparable damage and may find their business ruined without any adequate remedy at law. 75

TENTH: That the pickets in front of plaintiffs' place of business approached prospective customers of the plaintiffs and told them that the plaintiffs' restaurant was giving bad food, and that there was a strike in the plaintiffs' restaurant. That said pickets insulted customers of the plaintiffs, who were about to enter the said restaurant of the plaintiffs

ELEVENTH: That the said pickets directed customers about to enter the plaintiffs' place of business to other restaurants.

TWELFTH: That the partnership herein was formed on or about April 22, 1939, and all the plaintiffs signed the partnership agreement.

THIRTEENTH: That a certificate doing business as The Cosmo Cafeteria was duly filed by the plaintiffs in the office of the County Clerk of the County of Bronx.

77 FOURTEENTH: That the defendant Cafeteria Employees Union, Local 302, is a voluntary unincorporated association, consisting of a labor union and is affiliated with the American Federation of Labor, and the defendant William Mesevich is the president thereof.

FIFTEENTH: That the Cafeteria Employees Union, Local 302, is composed of and has jurisdiction over men and women employed in the cafeteria industry in the City of New York.

SIXTEENTH: That approximately three years ago, the plaintiff Louis Loizides opened a cafeteria at No. 726 East Tremont Avenue, in the
78 Borough of Bronx, City of New York, and personally conducted and owned said cafeteria from said time until April 22, 1939.

SEVENTEENTH: That during said period, from approximately three years ago to April 22, 1939, said cafeteria was owned and operated by Louis Loizides under the trade name of The Cosmo Cafeteria.

EIGHTEENTH: That by reason of said dispute and on or about the 14th day of April, 1939, a picket line was established by the Cafeteria Employees Union, Local 302, in front of The Cosmo Cafeteria; and that said system of picketing consisted of one person walking to and fro in front of said cafeteria.

NINETEENTH: That at no time did more than one person picket in front of The Cosmo Cafeteria.

TWENTIETH: That the picketing of The Cosmo Cafeteria was at all times orderly and peaceful. 80

TWENTY-FIRST: That no acts of violence have been threatened or committed by the defendant union.

TWENTY-SECOND: That the plaintiffs herein carry no workmen's compensation insurance.

TWENTY-THIRD: That the plaintiffs herein pay no social security taxes.

TWENTY-FOURTH: That the plaintiffs herein pay no unemployment insurance taxes.

TWENTY-FIFTH: That the picket on the picket line in front of The Cosmo Cafeteria has been instructed by the defendant union not to address or to accost any member of the public or any patron of The Cosmo Cafeteria, but merely to walk to and fro without making any oral statements. 81

CONCLUSIONS OF LAW.

1. That the plaintiffs are entitled to a permanent injunction, restraining and enjoining the defendants and their agents, servants and em-

ployees and those acting under their direction or control, from stationing any pickets at or near the plaintiffs' place of business at 726 East Tremont Avenue, Borough of the Bronx, City of New York, and from interfering with the plaintiffs' customers who may seek to enter their place of business, or to prevent by coercion or otherwise any customers of the plaintiffs seeking to enter plaintiffs' place of business, and from interfering in any other wise with the plaintiffs' business.

2. Let a judgment be entered accordingly.

83 Dated, New York, July 19, 1939.

T. A. L.,
Justice of the Supreme Court,
State of New York.

Judgment Appealed From.

At a Special Term, Part I, of the Supreme Court of the State of New York, County of the Bronx, at the Bronx County Building, 161st Street and Grand Concourse, in the Borough of the Bronx, City of New York, on the 19 day of June, 1939.

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Present: Hon. Timothy A. Leary, *Justice.*

[Same Title.]

The above entitled action having been brought by the plaintiffs for a permanent injunction

against the defendants and the individuals under their control, restraining and enjoining them from stationing pickets at or near the plaintiffs' place of business at 726 East Tremont Avenue, Borough of the Bronx, City of New York, and from interfering with the plaintiffs' customers who may seek to enter their place of business, or to prevent by coercion or otherwise any customers of the plaintiffs seeking to enter plaintiffs' place of business, and from interfering in any other wise with the plaintiffs' business, and issues of law and fact having been tried before me on the 21st day of June, 1939, and evidence having been adduced by both parties,

Now, on application of David L. Delman, attorney for the plaintiffs, it is

ORDERED, ADJUDGED AND DECREED, that the plaintiffs have judgment against the defendants for a permanent injunction restraining them, and the defendants hereby are restrained and enjoined from stationing pickets at or near the plaintiffs' place of business at 726 East Tremont Avenue, Borough of the Bronx, City of New York, and from interfering with the plaintiffs' customers who may seek to enter their place of business, or to prevent by coercion or otherwise any customers of the plaintiffs seeking to enter plaintiffs' place of business, and from interfering in any other wise with the plaintiffs' business.

Enter,

T. A. L.,
J. S. C.

MICHAEL McHUGH,
Clerk.

September 20, 1939.

88

Case and Exceptions.

SUPREME COURT,

BRONX COUNTY.

SPECIAL TERM, PART I.

[SAME TITLE.]

June 21, 1939.

Before: HON. TIMOTHY A. LEARY, *Justice*.

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APPEARANCES:

DAVID L. DELMAN, Esq., for the plaintiffs.

BOUDIN, COHN & GLICKSTEIN, Esqs., for the defendant, by LOUIS B. BOUDIN, Esq., and IRVING R. FEINBERG, Esq., of counsel.

LOUIS LOIZIDES, of 3104 Crotona Parkway, Bronx, New York City, one of the plaintiffs, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

90

Direct examination by Mr. Delman.

Q. Mr. Loizides, you are one of the plaintiffs in this case? A. Yes.

Q. Were you formerly the owner of the Cosmo Cafeteria at 726 East Tremont Avenue? A. Yes.

Q. On April 22, 1939, was this agreement signed between the other planitiffs and you (showing paper)? A. Yes, sir.

Mr. Delman: I offer that in evidence.

Mr. Boudin: That is objected to as irrelevant, immaterial and incompetent.

The Court: Objection sustained; mark it for identification.

(The paper was marked Plaintiffs' Exhibit 1 for Identification.)

Mr. Delman: I now offer in evidence certificate of doing business of the Cosmo Cafeteria, signed by these plaintiffs and filed with the Clerk of Bronx County on April 22, 1939. 92

Mr. Boudin: I object to that as incompetent, irrelevant and immaterial.

(Objection overruled; defendant excepts.)

(The certified copy certificate was received in evidence and marked Plaintiffs' Exhibit 2.)

Q. Prior to the signing and filing of Plaintiffs' Exhibit No. 2 already in evidence, did the employees and you at that time have a meeting? A. Yes, sir.

Q. And that was filed pursuant to that meeting A. Yes.

Q. Was it after that meeting that this agreement, Plaintiffs' Exhibit No. 1 for Identification, was signed by all the employees and you? A. Yes. 93

Mr. Delman: I renew my offer of the agreement of co-partnership in evidence.

Mr. Boudin: Same objection.

(Objection overruled; defendant excepts.)

(The paper marked Plaintiffs' Exhibit 1 for Identification was received in evidence.)

Q. Before this Plaintiffs' Exhibit No. 1 in evidence, and Plaintiffs' Exhibit No. 2 in evidence,

were signed, did you ever have any union employees? A. No.

Q. Was there ever a strike called in your place? A. No.

Mr. Boudin: I object to that as incompetent, irrelevant and immaterial.

(Objection overruled; defendant excepts.)

Q. Before these Plaintiffs' Exhibits 1 and 2 were signed was anyone from the union, Local 302 of the Cafeteria Workers Union, or anyone, to see you? A. No.

95

Cross-examination by Mr. Boudin.

Q. Mr. Loizides, before these two papers were signed, this alleged partnership agreement and the original certificate, was there a picket line, or any picketing in front of this store which you own, which is known as the Cosmo Cafeteria?

Mr. Delman: Objected to on the ground it is immaterial and incompetent.

(Objection overruled.)

A. Before the papers were signed there was picketing there.

96 Q. How long before this agreement marked Plaintiffs' Exhibit No. 1 was signed, had this picketing been going on in front of the Cosmo Cafeteria? A. About eight or ten days.

Q. There were nine people that signed this paper, which is Plaintiffs' Exhibit No. 1? A. Yes, sir.

Mr. Delman: Objected to; the paper speaks for itself.

(Objection sustained.)

Q. How many of these eight people who besides yourself signed Plaintiffs' Exhibit No. 1 had been in your employ at the time the picketing began? A. How many were in my employ before it was signed?

Q. Yes. A. All of them.

Q. All of them were in your employ? A. Yes.

Q. How long had they all been in your employ before this alleged partnership agreement was signed? A. Some of them have been there ever since I opened up the place.

Q. Well, how long is that? A. Almost three years. 98

Q. You mean you were the owner of this Cosmo Cafeteria for three years prior to the signing of either of these papers? A. Yes; I was the owner, and still the owner.

Q. You are still the owner; I want to make sure. You were three years the owner of the cafeteria before the papers were signed? A. Almost three years.

Q. You are still the owner of it? A. I am one of them to-day.

Q. You said a minute ago you are still the owner? A. One of them.

Q. You are one of the owners; when you started in that business called the Cosmo Cafeteria you were the only owner? A. When? 99

Q. When you opened that business? A. Yes.

Q. You were the only owner? A. That is right.

Q. How long did you continue as the only owner?

Mr. Delman: Objected to as answered already. He said April 22, 1939.

The Court: Objection overruled.

Mr. Boudin: If counsel will answer it, I will accept counsel's statement. If counsel

states that the man continued as the only owner ever since the opening three years ago until April 29, 1939——

Mr. Delman: That is correct—April 22, 1939.

Q. How long was Mr. Tsakires in your employ before April 22, 1939?

Mr. Delman: Objected to as immaterial. (Objection overruled.)

A. Mr. Tsakires worked for me, I think, some
101 time last summer, and he came back just about a month before we signed this partnership.

Q. You mean last summer was the first time he was employed by you? A. That is right.

Q. How about Constantine? A. There are two of them.

Q. Kallis Constantine. A. Constantine is more than a year.

Q. How much more?

The Court: That is long enough: we are not going behind that.

Q. How about Lymbouris, how long had he been
102 employed— A. From the first day I opened the place.

Q. That is about three years ago; how about Angelo Constantine? A. More than a year.

Q. How about Nicholas Russo? A. Nicholas Russo about—more than a year.

Q. How much more? A. Exactly I cannot tell.

Q. How about Stella Bellas? A. She worked for me a few weeks before we signed the contract.

Q. How many weeks before? A. Two or three weeks before.

Q. How about Mary Yorwick? A. What is the name?

Q. Mary Yorwick. A. About two months before I signed the contract.

Q. How about James Loizides? A. Ever since I opened the place.

Q. What? A. From the first day I opened the place.

Q. What functions or what work was each one of these people doing before this agreement was signed? A. What kind of work? 104

Q. Yes. A. What kind of work they were doing?

Q. That is right. A. Well, some of them, they were—one of them is a cook, another is a counterman, another is a dishwasher, and waitress, and counter, and cleaning, everything.

Q. Are they doing the same work now they had been doing before this paper was signed? A. They are doing everything that is necessary for the business.

Q. I asked you are they doing substantially the same work now they were doing before? A. About the same.

Q. Who is the counterman? A. More than one.

Q. How many countermen did you have? A. Well, four countermen. 105

Q. Are they still the countermen there now? A. Yes, they are doing counter work and they are doing cleaning work, they are doing——

Q. Were they doing cleaning work before? A. Yes.

Q. In other words, they are doing the same thing now they were doing before: the signing of this agreement did not make any difference or

106 *Louis Loizides—For Plaintiffs—Cross.*

change in the kind of work they are doing? A. No, but it is necessary——

Q. All I asked you, is there actually any change in the kind of work they were performing since the signing of the agreement? A. There is little change in counter work now.

Q. No, will you please answer the question. Is there or is there not, and if so, what is it? A. Well, there is some change.

Q. What is the change? A. I will tell you. Now they are partners, they are willing to do anything——

107 Mr. Boudin: I move to strike out "now they are willing."

Q. Let us take the cook, for instance, who is the cook? A. James Loizides.

Q. He was cooking all the time before? A. Yes.

Q. Is he still the cook? A. He is a cook, he is a salad man, he is doing counter work.

Q. Was he a salad man also before? A. No.

Q. No; you changed him from cook to salad man since? A. No, I did not change him; he was willing to do that.

Q. What? A. I did not change him myself.

Q. Who changed him? A. By himself.

108 Q. He changed it by himself; he said, "Now, boss, I have been cook until now. Now I will be salad man." Is that what you mean to tell this Court? A. I don't want to tell this Court, but that is what he is doing now.

Q. What is he doing now? A. Doing chef work, salad man's work, counterman's work; anything that is necessary for him to do.

Q. Was he doing anything besides the chef's work before this paper was signed? A. Yes; short orders.

Q. In other words, he did at that time what was required to be done, and he does the same thing now, isn't that the fact? A. Yes.

Q. When you opened this place of business you obtained a lease, I take it? A. A lease?

Q. Yes. A. Yes.

Q. For how long? A. Eight years.

Q. In your own name? A. Yes.

Q. The lease is still the same? A. Yes.

Q. And it is still in your own name? A. Yes. 110

Q. And when you opened this cafeteria you gave it the name by which it became known, is that correct? A. That is right.

Q. What was the name you adopted for it? A. Cosmo Cafeteria.

Q. It is still running under the same name? A. That is right.

Q. When the picket first appeared in front of the Cosmo Cafeteria what did you do? A. I did not do anything.

Q. Didn't you go see a lawyer? A. Why should I see a lawyer?

Q. When did you see a lawyer for the first time? A. Only after we signed up the partnership agreement. 111

Q. After you signed the partnership agreement; before that you did not see any lawyer? A. No.

Q. Sure about that? A. Yes.

Q. Who drew up the partnership agreement? A. The lawyer drew the partnership agreement.

Q. So you saw a lawyer before the partnership was drawn up? A. I saw him about the partnership agreement.

Q. I thought you said you did not see him until after the partnership was signed? A. Well, about the pickets I mean.

Q. I have not asked you about that. I asked you how long after the picket appeared in front of your business did you see a lawyer; that is all I asked you and I want an answer to that question.

Mr. Delman: Objected to as immaterial. (Objection overruled.)

Q. What is the answer? A. Well, we saw a lawyer for the agreement.

113

Mr. Boudin: I did not ask that; I move to strike it out.

Q. I say, how long after the picket appeared in front of your business did you see your lawyer? A. About the 22nd, when we signed up the agreement.

Q. Was that the first time you saw your lawyer? A. Yes.

Q. The 22nd? A. That is right.

Q. You did not see your lawyer between the date of the appearance of the picket in front of your store and the 22nd? A. No.

111 Q. When did the picket appear in front of your premises? A. About the 14th or 15th of April.

Q. And you say you did not see your lawyer between the 14th of April and the 22nd of April? A. No.

Q. And when you saw your lawyer for the first time on April 22nd, where did you see him? A. Called him up in his office.

Q. I did not say where you called him; I said where did you see him. A. In the Cosma Cafeteria.

Q. Did he come up to the Cosmo Cafeteria? A. We called him to come up.

Q. You called him and he came up to the Cosmo Cafeteria? A. Yes.

Q. And that was on April 22nd? A. That is right.

Q. What time of the day was it when he first came there? A. What?

Q. What time of the day was that when your lawyer first came to the Cosmo Cafeteria on April 22nd?

Mr. Delman: Objected to.

(Objection sustained: defendant excepts.) 116

Q. Where was this paper, the alleged agreement which is marked in evidence as Plaintiffs' Exhibit No. 1, signed?

The Court: We don't care where it was signed.

Mr. Boudin: On the question of credibility.

The Court: No, we are not going to have all the details of what time the lawyer got there and what time it was signed. We have a certificate.

Mr. Boudin: If your Honor please, we claim this is a fraud: we have a right to prove fraud. 117

The Court: All right: we will get the date of the certificate.

Mr. Boudin: I don't care about the date of the certificate. We intend to prove this is a fraud. We therefore have a right to go into that.

(Objection sustained: defendant excepts.)

Q. Were all the people present in the same room when this agreement was signed, this Plaintiffs' Exhibit No. 1?

Mr. Delman: Objected to.
(Objection sustained; defendant excepts.)

Q. Were both of these papers, Plaintiffs' Exhibit No. 1 and Plaintiffs' Exhibit No. 2, signed at the same time or at different times? A. The same time.

Q. Both in your place of business? A. Yes.

119 Q. Were they signed on the occasion when the lawyer first appeared in your place?

Mr. Delman: Objected to.
(Objection sustained; defendant excepts.)

Q. When the lawyer came to your place of business did he have these papers with him?

Mr. Delman: Objected to.
(Objection sustained; defendant excepts.)

Q. How long did the lawyer stay in your place of business when he got there on April 22nd the first time, assuming he was there at one time or—

120 The Court: Hadn't we better find out who the lawyer was?

Mr. Boudin: Yes, perhaps we ought to identify him. I take it it is the same lawyer appearing for the plaintiff. I withdraw the other question and let us put the question the Court suggested.

Q. Was the same lawyer who now appears for you here as attorney for the plaintiff, the lawyer

who prepared these papers? A. The same lawyer prepared the papers that is here now?

Q. Yes. A. Yes.

Q. What is his name? A. David L. Delman.

Q. Was this lawyer only once that day in your place of business, or more than once?

Mr. Delman: Objected to.

(Objection sustained; defendant excepts.)

Q. On this occasion when he got there how long did he stay there?

Mr. Delman: Objected to. 122

(Objection sustained; defendant excepts.)

Q. When you called him on the telephone, as you said you had called him, before he came there, did you have a long conversation with him or a brief one?

Mr. Delman: I object to that.

(Objection sustained; defendant excepts.)

Q. May I ask you how long did that conversation last?

Mr. Delman: Objected to.

(Objection sustained; defendant excepts.) 123

The Court: You have enough of that. They made an agreement; whether they made it that day or some other day, or a month afterwards, you have the date when the picket went there and you have the date when this agreement is alleged to have been signed.

Mr. Boudin: We claim they never made an agreement, except the lawyer and himself.

The Court: All right; there is the agreement.

Mr. Boudin: That does not mean anything.

The Court: As far as your rights are concerned, that is your case.

Mr. Boudin: If your Honor please, in an action in fraud, the slightest detail may sometimes point the way in which the fraud was committed, and I think we have a right to bring out these details for your Honor's benefit, as well as for the benefit of the Court that may review it.

The Court: The question is whether they can do this thing; that is what you are concerned about. You are not concerned in this case whether there was fraud; you are concerned with whether or not they can do what they did.

Mr. Boudin: No, sir; that is not the point.

The Court: Oh, yes, it is.

Mr. Boudin: We claim people have a perfect right to become partners, but we claim this is a fraud, a pretended partnership.

The Court: There is what was done and that speaks for itself. The Court can interpret fraud out of that, if it wants to.

Mr. Boudin: If people were bound by paper writing in fraud actions, fraud could never be proved, because a paper never says "I am a fraud." The paper pretends to be an innocent transaction.

The Court: They say they did that, and it is of very recent date. The only way that can be determined in my mind is lapse of

time. Time will tell whether they were sincere, or whether they did it for a particular purpose.

Mr. Boudin: Will your Honor wait with the judgment for this particular time?

The Court: No.

Mr. Boudin: That is why we must prove it today.

The Court: I say, then you have your remedy, if it works out otherwise.

Mr. Boudin: What kind of remedy would we have? I would like to be enlightened. I have given considerable thought——

128

The Court: I don't need to tell you. All you need do is to put pickets there; that will bring it up.

Mr. Boudin: We have pickets there today. They want your Honor to say they should not be there. If your Honor says that, that is the end of the matter.

The Court: I don't think you need all this for your case.

Mr. Boudin: The question of what I need for my case, naturally, I must determine, in the first instance. Your Honor has the right to say I am wrong, but I must be guided by my own lights.

129

The Court: All right; you have indicated what you want, and I have ruled on it.

Mr. Boudin: I want to establish that the other people knew nothing about this, that this was concocted between the lawyer and this man on the witness stand, and the other people were told to sign, and they signed without knowing what it was. That is our

130 *Louis Loizides—For Plaintiffs—Cross.*

contention, and I want to prove it by cross-examination if I can.

The Court: Proceed.

Q. Now, Mr. Loizides, do you know anything about the World Cafeteria?

Mr. Delman: I object to that, not within the issues in this case.

(Objection sustained.)

Mr. Boudin: If your Honor please, we take an exception. We desire to prove this is a part of a large scheme whereby a num-
131 ber of employers have agreed on the same scheme of beating the law, and therefore I want to show this man's connection with the World Cafeteria, in which the same thing was done.

(Objection sustained; defendant excepts.)

The Court: You may ask him if he is a partner.

Mr. Boudin: I asked him whether he knows anything about it.

The Court: We don't want hearsay.

Mr. Boudin: That is not hearsay.

The Court: You may ask him if he is a partner in the World Cafeteria.

132 Mr. Boudin: He says lots of people are partners who are not.

The Court: I want to apologize for inciting an objection. I am going to keep quiet.

Mr. Delman: Is colloquy between Court and counsel a part of the minutes? The stenographer takes it down.

Mr. Boudin: Yes, I prefer it should be taken. Everything that happens in a court should be on the record.

Mr. Delman: It makes the record expensive.

Mr. Boudin: I will pay for the record, I assume.

The Court: We are going to stop talking. Proceed with the trial.

Q. Do you know whether or not the World Cafeteria was partnerized about the same time the Cosmo Cafeteria was partnerized?

Mr. Delman: I object to that, partnerized.

(Objection sustained.) 134

Q. Do you know who is the owner of the World Cafeteria?

Mr. Delman: Objected to.

(Objection sustained; defendant excepts.)

Redirect examination by Mr. Delman.

Q. Have you the lease, Mr. Loizides, with you? A. Yes (producing paper).

Mr. Delman: I offer the lease in evidence; the agreement between the B. Realty Corporation and this witness, Louis Loizides. 135

The Court: I thought you wanted to keep the record small.

Mr. Delman: I want to show it is not assignable. Let me read this provision into the record and I won't offer the whole thing.

Mr. Boudin: You cannot read one provision. If you offer it in evidence, and it is proper, it will go in. I object to your read-

136 *L. Loizides—For Plaintiffs—Redirect—Recross.*

ing any provision from a document that is not in evidence.

Mr. Delman: I offer the lease in evidence.

Mr. Boudin: Objected to as incompetent, irrelevant and immaterial.

The Court: What? Do you object to the lease?

Mr. Boudin: No, I don't object to it—but only to the lease, nothing else.

(The lease was received in evidence and marked Plaintiffs' Exhibit 3.)

137 Q. Did you ask the landlord for permission to assign this lease to the partnership?

Mr. Boudin: Objected to.

(Objection sustained.)

Mr. Delman: I direct the Court's attention to paragraph four of the lease.

Mr. Boudin: That is not the way of proving it, any way.

Q. When the pickets were established, what did you see the pickets do—you personally?

Mr. Boudin: My associate calls my attention to the fact that I omitted to ask the
138 witness some questions that should be brought out first.

The Court: Proceed.

Cross-examination (resumed) by Mr. Boudin.

Q. Have you got a bank account, or has this business got a bank account? A. Yes.

Q. When was the bank account opened? A. The bank account, what name?

Q. What? A. The bank account on what name?

Q. On the name of the Cosmo Cafeteria. A. That was opened last Monday.

Q. Did you have a bank account before? A. Yes.

Q. Where was that? A. That was in my name.

Q. What? A. On my name.

Q. Where; I did not ask you— A. Public National Bank.

Q. Is it still there? A. Yes.

Q. The bank account is still there? A. Yes.

Q. Have you got two bank accounts now, or one? A. One.

Q. You mean this bank account, your old bank 140
account was transferred to the new name? A. Cosmo Cafeteria.

Q. When was that done? A. Last Monday.

Q. That is June 12th? A. No, it is more than that.

Q. You mean the day before yesterday, June 19th? A. That is right.

Q. That was after the trial of the World Cafeteria case? A. Why, yes.

Q. Up to June 19th, the old account that stood in your name in the bank continued in your name? A. Yes.

Q. When, if at all, did you transfer your fire insurance? A. When?

Q. Let us put it this way. Did you transfer your 141
fire insurance? A. Right after the partnership.

Q. When you say right after, how long after? A. Well, I don't know. I don't remember exactly how many days after; a few days after.

Q. Did you make any arrangements or changes in respect to social security or compensation insurance? A. What do you mean arrangement

142 *Louis Loizides—For Plaintiffs—Recross.*

Q. What? A. What kind of arrangements?

Q. Have you made any changes? A. Yes.

Q. I take it you had workmen's compensation? A. Yes.

Q. Did you make any changes in that? A. I cancelled that.

Q. You cancelled that when? A. Right after the partnership.

Q. When you say right after, how long after? A. A few days after.

Q. What do you call a few days? A. I don't remember exactly.

143 Q. Have you got a record of it? A. I have a record of the cancellation of the policy, but I notified the company right away.

Q. The same day? A. Not the same day, but a few days after, two or three days after.

Q. Did your lawyer tell you to do that, or your insurance broker tell you to do that? A. The lawyer did not tell me to do that.

Q. What? A. Nobody told me to do it.

Q. You did it of your own accord? A. Yes.

Q. You knew the law on the subject? A. I know there is no workers, there is no workmen's compensation.

Q. That is quite clear to you?

144 Mr. Delman: I object to that.

Q. How much money, if any, did these partners of yours invest in the business? A. A certain percentage.

Q. Let us say, how much did Tsakires invest?

Mr. Delman: Objected to. The agreement speaks for itself.

Mr. Boudin: I don't know, does it?

Mr. Delman: Exhibit 2 in evidence; read it.

(Objection sustained.)

Mr. Boudin: Exception. Will your Honor please take a recess so that I can read the agreement and see exactly what it says and what it does not? I did not think I should spend time on it, but if counsel says the agreement speaks for itself, I ask the Court, respectfully, for a chance to read the agreement.

The Court: We will take a five-minute 146
recess.

(Short recess.)

Q. Mr. Loizides, did you obtain a Board of Health permit for the running of these restaurants? A. Yes, sir.

Q. When? A. Well, last year.

Q. Was that changed to the partnership? A. No; it expires this month, so it is going to be changed this month.

Mr. Boudin: I move to strike out "it is going to be changed this month."

(Motion granted.)

147

Q. How much money, if any, did Mr. Tsakires either give you or pay into the treasury of the partnership prior to or upon or after the signing of this agreement which is in evidence as Plaintiffs' Exhibit No. 1? A. They gave me notes.

Q. What? A. They gave me notes.

Q. Will you please answer the question? How much money, if any, did they give you? A. You mean cash money?

148 *Louis Loizides—For Plaintiffs—Recross.*

Q. Yes. A. They did not give any cash money.

Q. You volunteered the statement he gave you a note? A. Yes.

Q. Have you got these notes? A. Yes.

Q. Let us look at them. A. (Notes produced.)

Q. Mr. Loizides, you have handed me a batch of eight notes, eight promissory notes. Are these the notes that your partners gave you at or about the time of the signing of this agreement? A. Yes.

Q. So that none of the partners gave you any money? A. Cash money, no.

Q. Each one of them gave you a note?

149

The Court: He has answered that.

Q. I show you this paper writing purporting to be a promissory note signed by Tsakires, and ask you whether you claim that that is the note which he gave you at or about the time of the signing of this agreement? A. This is the note.

Mr. Boudin: If your Honor, please, I offer this for identification.

Mr. Delman: Offer it in evidence.

Mr. Boudin: I don't want to offer it in evidence. I claim this is a fraudulent note. Why should I offer it in evidence?

150

(The paper was marked Defendant's Exhibit A for Identification.)

Mr. Boudin: I would like to know whether counsel for the plaintiff will stipulate that these eight pieces of paper, purporting to be promissory notes signed by the eight plaintiffs other than the one on the witness stand, all purport to be due one year from April 2, 1939.

Mr. Delman: Well, whatever they are, they are.

Mr. Boudin: I don't know. I ask for a stipulation. The record does not know what they are.

Mr. Delman: You may read them into the record.

Mr. Boudin: I am not going to read anything into the record which I believe to be fraudulent.

Mr. Delman: I object to these remarks. He is beginning to accuse me every two minutes. 152

Mr. Boudin: I want to know if counsel will stipulate.

Mr. Delman: I will offer these notes in evidence myself.

Mr. Boudin: If you offer them, I may object to them. That is why I did not want to offer them. I now want to know whether you will stipulate; will you stipulate that all of these eight promissory notes are due one year after April 22, 1939?

Mr. Delman: I will stipulate what the notes say, of course.

Mr. Boudin: Is that the stipulation?

Mr. Delman: Let me see them, please. (After examining notes) Yes, they are all due one year from April 22, 1939. 153

Q. Now, Mr. Loizides, did your attorney when he came to you on that day, on April 22, 1939, have these eight notes with him? A. No.

Q. Were they signed while he was there? A. No.

154 *Louis Loizides—For Plaintiffs—Recross.*

Q. When were they signed?

Mr. Delman: I object to that.
(Objection sustained; defendant excepts.)

Q. How much did these various partners of yours receive as salary before this paper writing which is in evidence as Plaintiffs' Exhibit No. 1 was signed?

Mr. Delman: I object to that as immaterial.
(Objection sustained; defendant excepts.)

155

Q. Are they now receiving, respectively, the same amounts as drawing accounts under the paper writing?

Mr. Delman: I object to the form of the question.

Q. Or purportedly under the paper writing?

Mr. Delman: I object to the form, because the answer would be meaningless; the same amount as what?
(Objection overruled.)

156 Q. That they received before as salaries? A. They received about the same.

Q. When you say about, were there any changes? A. Yes.

Q. What changes were there, if any? A. If some of them people need more, and——

Q. I am not asking you about "if". I am asking about the drawing account under the agreement. Is the drawing account fixed by the agreement the

same as the salaries they had previously been receiving, respectively? A. They received the same.

Mr. Delman: I offer these eight notes in evidence.

Mr. Boudin: I object to them on the ground they are irrelevant, immaterial and incompetent.

(Objection sustained; plaintiffs except.)

Redirect examination by Mr. Delman.

Q. What did you see the picket do in front of your place? A. The picket stopped people from coming in the store. 158

Mr. Boudin: I object to that as calling for a conclusion—saw them stopping.

The Court: I heard it but I did not understand it.

The Witness: I saw the picket stop customers from coming in the store.

Mr. Boudin: I move to strike it out, being a conclusion of the witness.

(Motion granted.)

Q. What did you see them do? A. I saw them tell them that the food is no good. 159

Mr. Boudin: I move to strike that out. That is clearly not responsive. He could not see them tell.

(Motion denied; defendant excepts.)

Q. Did you yourself hear the pickets talk? A. Yes.

160 *Louis Loizides—For Plaintiffs—Redirect.*

Q. Please tell his Honor what you yourself heard. A. I heard them telling customers not to come in, because we don't serve good food, and we do not pay our people right, and they sent them to other restaurants.

Mr. Boudin: I move to strike out the statement saying we heard them say to customers they did not serve good food, because there is no such allegation in the complaint and we are not prepared to try such an issue. That is purely an afterthought.

161 (Motion denied; defendant excepts.)

Q. What else did you hear about saying to customers? A. Hear them insult customers.

Mr. Boudin: I move to strike that out.
Mr. Delman: Consented to.

Q. What did you hear them say; don't characterize it. A. They called them pigs.

Mr. Boudin: Objected to for the same reason; there is no such allegation in the complaint.

162 (Objection overruled; defendant excepts.)

Mr. Boudin: If your Honor please, I now move to strike out the testimony of this witness with respect to the alleged statement by pickets, upon the ground that it is indefinite as to time, place, so that we could not possibly either controvert it, or perhaps prosecute for perjury, if it should turn out to be untrue.

(Motion denied; defendant excepts.)

WALTER BIETSCH, of 1945 Clinton Avenue, Bronx, New York City, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct examination by Mr. Delman.

Q. Mr. Bietsch, are you one of the customers of the Cosmo Cafeteria at Tremont Avenue? A. Yes.

Q. Did you have occasion to go there with your wife since the picketing has started? A. Yes, sir.

Q. Tell us when the last time is that you went into the store. A. I was in the Cosmo as late as last night. I am regularly eating there ever since 164
I have lived in the neighborhood.

Q. Have you been approached by pickets, you and your wife? A. Yes.

Q. When? A. Time and time again, as the pickets changed; I have been insulted time and time again.

Q. Exactly what did they say to you and your wife? A. I personally witnessed my wife being slandered right in front of the place.

Mr. Boudin: I move to strike that out.

Mr. Delman: That is consented to.

Q. Don't use words like that; tell us what you 165
heard them say. A. In the first place, there was a woman picket.

Q. Go on. A. And she insulted my wife, she called her a pig for not co-operating with the sign that she was carrying on her back.

Q. What else did they say? A. They told them, in the first place, the food is not worth-while eating, to which my wife contradicted the statement by saying, "I have been eating here for two years."

Q. What else did they say? A. I was asked by a picket that changed, interchanged with her, after she left the picket line, there was a man replacing her that is not in court.

Q. What did he say to you? A. He came over, he said, "Why don't you give me a break?" I said, "Listen, I have patronized this place ever since I am living in the neighborhood, and I refuse to take your advice." Naturally he was insulting and——

Mr. Boudin: I move to strike that out.
(Motion granted.)

167 Q. What did he say? Don't characterize it. Is that all he said? Have you told us all? A. Practically; he used words that were unbecoming anybody.

Mr. Boudin: I move to strike that out.

Q. What words did he say? A. It is hard to say; they were all profane language.

Mr Boudin: I move to strike it out.
(Motion granted.)

Q. Have you seen them approach other customers, too? A. Absolutely.

168 Q. And use the same language? A. Practically, yes.

Cross-examination by Mr. Boudin.

Q. Mr. Bietsch, where do you live? A. 1945 Clinton Avenue.

Q. How far is that from this store? A. About 50 feet.

Q. Were you standing in front of this cafeteria watching the picket? A. I am sitting right in front; the lunch counter is situated——

Q. You mean you were sitting in front of your house? A. What?

Q. When you say you were sitting at the entrance, whose entrance? A. At the entrance to the cafeteria.

Q. You sat there; what do you mean by sitting there? A. The location of the lunch counter?

Q. Yes; you mean while you are inside? A. While I am inside.

Q. And the pickets were outside? A. Yes. 170

Q. And you heard from where you were sitting inside what the pickets were saying to people outside? A. Absolutely; the doors are kept open.

Q. How frequently do you sit at this lunch counter? A. Three times a day.

Q. Also your wife? A. No, twice a day for my wife.

Q. You don't keep house? A. Well, I am a night worker; naturally it is more convenient for us to eat meals according to my hours.

Q. What is your employment, if I may ask? A. I am down in Wanamaker's maintenance mechanic in Wanamaker's.

Q. How long have you been there? A. Eight years. 171

Q. Did you ever have any trouble with any unions? A. None that I know of.

Q. What? A. None that I know of.

Q. Sure about that? A. Absolutely.

Q. How long have you known Mr. Loizides, the plaintiff in this case? A. I am married, let us see, almost three years; and Louis has been there about the same time.

Q. Three times a day for three years? A. Me, not my wife.

Q. You have been going in his place? A. Yes.

Q. So has your wife; you are pretty friendly? A. Not exactly.

Q. Were you subpoenaed here? A. No, sir.

Q. You were asked to come down and you were obliging? A. I said I would come as a witness.

Q. I understand; here you were asked to come down, and you naturally would oblige a neighbor? A. No one asked me any questions; oh, no, you are wrong.

173 Q. I have not asked you anything about questions. I say, you were asked to come down and it was natural for you to come down, being a neighbor and a customer for three years? A. Yes.

Mr. Delman: I object to the form of the question, the use of the word natural.

(Objection overruled.)

Mr. Boudin: Well, it may be unnatural; I think it is unnatural.

The Court: I overruled the objection.

Q. Do you know any of the other customers that come there? A. Yes.

Q. Regularly? A. Yes.

174 Q. Can you name them? A. Well, the names I could not give you, the last names.

Q. But you see them all the time? A. Yes.

Q. The same set of customers coming down there? A. Yes.

Q. Do you see any of them in court? A. No; they are unfortunate; they are working days.

Q. They are unfortunate, they work days; how do you know all that? A. The crowd I mingle with.

would sit there, the customers, natural to talk—that is friendly conversation that goes on over the lunch counter.

Q. I see; you take considerable interest in this case, apparently. A. Absolutely.

Mr. Boudin: All right, that is all.

ELIAS TSAKIRES, of 1348 St. Nicholas Avenue, New York City, one of the plaintiffs, called as a witness on behalf of plaintiffs, being first duly 176 sworn, testified as follows:

Direct examination by Mr. Delman.

Q. You are one of the plaintiffs in this case, are you? A. Yes.

Q. Plaintiffs' Exhibit No. 1 in evidence, Mr. Tsakires, I ask you whether this bears your signature? A. Yes.

Q. Do you recall the meeting of employees prior to the date when this agreement was signed? A. Yes, I do.

Q. Pursuant to that meeting you decided to become partners? A. Yes, that is right. 177

Mr. Boudin: I move to strike out the answer and object to the question as calling for a conclusion.

(Motion granted.)

Q. It was following that meeting that this agreement was signed; is that right? A. That is right.

Q. You gave your note? A. I did.

Cross-examination by Mr. Boudin.

Q. Mr. Tsakires, what naturally is your employment—I mean, what do you do in the cafeteria? A. I am a counterman and an all-around man.

Q. How long have you been that? A. I worked at the same place last summer; I left in the winter time and I came back about three or four weeks before the picketing started.

Q. How long have you been in their employment altogether? I mean, how long have you been em-
179 ployed as a food worker? A. Since I came to this country, 1930.

Q. How much were you getting paid, what was your salary before this alleged partnership agreement was signed?

Mr. Delman: I object to that.
(Objection overruled.)

A. It was $19.

Q. Do you keep a bank account? A. Of my own?

Q. Yes. A. Yes, my father.

Q. I asked you have you got a bank account.

180 Mr. Delman: Objected to, incompetent, irrelevant and immaterial.

Q. You understand the question, don't you? A. Yes.

Q. Have you a bank account? A. No, sir.

Mr. Delman: I object.
(Objection overruled.)

Q. Neither savings nor business? A. No, sir.

Q. Any safe deposit vault?

The Court: I think probably we don't need to go into that. Objection sustained.

Mr. Boudin: He may not need it; we may because he has not got any. I think your Honor should permit that question.

The Court: We don't need to go into that.

Q. Have you $1,500 in cash anywhere? A. No, sir.

Q. Have you ever had $1,500 since you have been in this country? A. I have. 182

Q. You did have? A. Yes.

Q. When? A. Two years ago.

Q. What became of it? A. I went into business.

Q. And you lost it? A. Yes.

Q. And you haven't had any since—that is all.

(Plaintiffs rest.)

Mr. Boudin: If your Honor please, we move to dismiss the complaint upon the ground that they have failed to make out a cause of action as pleaded, or any cause of action for injunction under the statute, and under the law governing this class of cases.

(Motion denied. Defendant excepts.) 183

DEFENSE.

Mr. Boudin: Mr. Delman, will you please take the witness stand?

184 *David L. Delman—For Defendant—Direct.*

DAVID L. DELMAN, of 915 East 179th Street, Bronx, New York City, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Boudin.

Q. Mr. Delman, you are the attorney for the plaintiff in this case? A. Yes.

Q. You were also the attorney for the plaintiff in the case of Angelos against Meservich, tried in this Court the other day before Judge Leary? A. Yes.

185 Q. I show you this paper writing marked in evidence as Plaintiffs' Exhibit No. 1, and I ask you whether you prepared that? A. Yes, sir.

Q. I show you this paper writing which is Plaintiffs' Exhibit No. 2, purporting to be a certified copy of a filed document, and ask you whether you prepared the original and caused it to be filed? A. Yes, sir.

Q. And you had similar documents prepared and filed—that is the one that needs to be filed—in the other case of Angelos against Meservich? A. Yes.

Q. On the same day? A. I believe so.

Q. The alleged partnership agreements were
186 drawn on the same day, and the alleged certificate of doing business the same day? A. They were drawn the date they bear; I could not say that, whatever date it bears.

Q. Do you remember what date they bore in the other case? A. I did not hear that.

Q. Don't you remember the date of the other papers? A. Offhand I really don't. I believe they are the same date. I am not certain.

Q. Did you visit the other man's place of business also, the World Cafeteria, just as you visited

the Cosmo Cafeteria on that day? A. I have been eating—on that day?

Q. Yes. A. I visit them every morning.

Q. Just yes or no. A. I am there every morning, so I assume I was there that day, too. I have breakfast there every day for many years.

Q. This was not breakfast time when these papers were prepared? A. Well——

Q. At which place do you eat breakfast, Cosmo or World? A. One day I eat at the World, one day at the Cosmo. I have been doing that for many, many years.

Q. On this particular day, April 22nd, did you 188
have your breakfast at the Cosmo or the World? A. I could not remember that.

Q. You heard Mr. Loizides say that he called you on the telephone? A. That is right.

Q. That day, and asked you to come up? A. That is correct.

Q. Apparently you did not either have breakfast there, or he did not ask you at breakfast time? A. Neither statement is correct.

Q. You did have breakfast at the Cosmo and he did talk to you, I take it, at breakfast; is that so? A. Certainly; I talk to him every morning.

Q. But you said a minute ago you did not know whether you were there that morning for breakfast. A. I did not say that—oh, I don't know 189
whether the Cosmo or the World; it was one of the two.

Q. Mr. Witness, you are a lawyer; didn't you hear my question? I asked you, you said neither was true. A. I said neither of your statements was true, not neither of my statements.

Q. So you were there at breakfast when you did talk to him? A. I have no doubt it was one of those two restaurants, and spoke——

Q. I am speaking of the Cosmo, Mr. Delman. A. I cannot remember if I had breakfast at the Cosmo.

Q. Then how do you know it is not true that you did not speak to him at breakfast? A. Why, I often meet one of the brothers at the other's restaurant at breakfast. I don't understand the question.

Q. Mr. Delman, do you understand English? A. I used to teach English, sir. I understand it very well. I don't understand your English.

Q. I asked you this question, were you at the
191 Cosmo that morning, and did he speak to you at breakfast, and you said neither of these statements was true. Now I ask you, how do you know that the statement that you were there at breakfast was not true if you have no memory about it?

The Court: You don't have to answer that question.

Mr. Delman: I object to it as immaterial.

The Court: Objection sustained.

Mr. Boudin: Objected to as embarrassing; that is a proper objection.

The Court: No; next question.

Mr. Boudin: I take an exception; that is all. Is Mary Yorwick here? Mary Yor-
192 wick, one of the plaintiffs. (No response.)

I ask counsel whether his plaintiffs are here or not.

Mr. Delman: I have a good many of them here.

Mr. Boudin: Will you tell me whether Mary Yorwick is here?

Mr. Delman: I don't know their names. There is another plaintiff here, another female.

Mr. Boudin: I have asked about Mary Yorwick.

Mr. Delman: She did not answer, so she is not here.

Mr. Boudin: You assume she is not here.

Mr. Delman: That is right.

Mr. Boudin: Is the other plaintiff, Stella Bellas, here—all right, please take the stand.

STELLA BELLAS, of 528 West 143rd Street, New York City, one of the plaintiffs, called as a witness on behalf of the defendant, being first duly sworn, testified as follows: 194

Direct examination by Mr. Boudin.

Q. Miss Bellas, you are one of the plaintiffs in this case? A. I am.

Q. How long were you working in the Cosmo Cafeteria before April 22, 1939? A. About two or three weeks before the time.

Q. How much were you getting there? A. How much was I getting?

Q. Yes. A. $10 a week and my tips.

Q. How much? A. Ten a week and my tips.

Q. Are you still getting ten a week and your tips? A. I am drawing the same. 195

Q. You are getting a drawing the same and getting your tips? A. I certainly am.

Q. Those are not drawings? A. No.

Q. Where did you work before that?

Mr. Delman: I object to that as immaterial.

(Objection sustained: defendant excepts.)

196 *Stella Bellas—For Defendant—Direct.*

Q. Have you any bank accounts, savings bank or business bank accounts? A. Am I entitled to answer that?

Mr. Delman: I object to that as immaterial.

(Objection sustained; defendant excepts.)

The Court: Wait a minute; is there anything on the record that she paid cash?

Mr. Boudin: No, she gave a promissory note, supposedly.

197 The Court: Is there any evidence in the case she paid cash for her interest?

Mr. Boudin: No.

The Court: All right, I sustain the objection.

Mr. Boudin: Exception. If your Honor please, the purpose of this is to show there could not have been possibly any expectation these people could ever pay their notes.

The Court: I have the idea.

Q. Have you any cash, Miss Bellas? A. I have.

Q. $750? A. No.

Q. Neither in a bank nor at home or a chest, or anywhere else? A. No, not that much.

198 Q. You have not paid anything to Mr. Loizides? A. I have not.

Mr. Boudin: I take it your Honor will rule the same way as the others, that it is immaterial whether they have money or not.

The Court: Yes. Because people give notes payable in thirty days or sixty days, it does not necessarily imply they have to have the money on that day.

Mr. Boudin: If your Honor please, I have not asked for an opinion: I have asked for a ruling.

The Court: What is that?

Mr. Boudin: I say I have asked for a ruling so as to know whether to call the other witness.

The Court: You ask for a ruling?

Mr. Boudin: Yes.

The Court: I will not rule, then.

Mr. Boudin: I will then call the others. I ask your Honor to make a ruling to save time. 200

The Court: If you are going to ask it, you should ask it in a nice, polite way.

Mr. Boudin: I hope I was polite; I did not mean to be impolite.

The Court: No, you were not.

Mr. Boudin: I hope I have not offended your Honor; I did not mean to.

The Court: It sounded like it to me.

Mr. Boudin: I have not intended to offend your Honor. What I wanted to say was, I wanted to know whether I should call these witnesses, or your Honor will have this ruling stand as to all of them, that is all.

The Court: You asked something about 201
a note: I said the fact they did not have money did not indicate to me that a person would have to have money, or any court would rule it was necessary for them to have the specified amount at the time the note was due.

Mr. Boudin: And I said that you did not give me the ruling asked for. What I wanted to know was whether I should call those witnesses. That was the purpose of

my asking your Honor whether I should call them, or save time by your Honor making that ruling, that that applies to all of them.

The Court: I don't know what ruling you asked for now.

Mr. Boudin: When I called this witness and asked her whether she had any money or not, your Honor ruled that was immaterial. Now I can call seven more and ask them the same question, or I can save the Court and myself the trouble of doing so if your Honor will say that the ruling stands
203 as to all, and give me an exception. That is all I asked your Honor. I don't know why your Honor took offense. I ask your Honor now.

The Court: I am not ruling.

Mr. Boudin: Is Miss Mary Yorwick here?

Mr. Delman: You called the name three times.

Mr. Boudin: I would like Mary Yorwick produced. If I have to put them all on the witness stand, I want counsel to produce those plaintiffs so that I can put them on the witness stand and ask them questions.

204 Mr. Delman: They were subpoenaed for the last trial. I assumed if you wanted them you would subpoena them again.

The Court: I rule then, if the plaintiffs are called and if they are asked, "Have you any cash or any money at this time," and it is objected to, I will sustain the objection.

Mr. Boudin: And as to whether they ever had a bank account, or what not, or any safe deposit box, the ruling would be the same.

The Court: Yes.

Mr. Boudin: All right; I take an exception to that, and save ourselves the trouble.

RALPH DEL PINO, of 1268 Olmstead Avenue, Bronx, New York City, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Boudin.

Q. Mr. Del Pino, what is your business or occupation? A. Business agent, Cafeteria Employees 206
Union, Local 302.

Q. Speak louder. A. Business agent of Local 302.

Q. How long have you been business agent? A. About two years.

Q. You know this place where the Cosmo Cafeteria is being conducted? A. I do.

Q. And you also know the place where the World Cafeteria is being conducted? A. I do.

Q. Is that within your district? A. That is correct.

Q. What do you call it, inspection district, business district? A. In our line of business we call it our territory. 207

Q. To which you are assigned by your union for the purpose of organization and such other duties as a business agent of a union may perform? A. That is correct.

Q. Do you know Mr. Loizides? A. I do.

Q. Have you ever had any conversations with him? A. I have.

Q. When was that? A. I had a conversation with him around—it was around the 12th of April when I first spoke to Mr. Loizides.

Q. What did you discuss with him—the possibility of signing an agreement with the union? A. That is correct; I attempted to, and I could not, because Mr. Loizides cut me short.

Q. You also asked him to sign an agreement with the union? A. Yes.

Q. And he refused to do that? A. That is correct.

Q. And did you thereupon place a picket, or picket line as it is usually called, in front of the Cosmo Cafeteria? A. The following day.

Q. That was about the 13th of April? A. More
209 or less; I am not certain.

Q. When I said a picket line, what did that consist of? A. One man with a sign.

Q. One man? A. One man.

Q. Did you ever have more than one picket in front of these premises? A. Never did.

Q. How often have you been around to see what was going on there? A. I go around there to inspect the picket line an average of once a day, sometimes twice a day, morning and afternoon.

Q. Have you ever noticed any disorder or any altercations or anything else going on in front of these premises? A. None whatsoever.

Q. Just state to the Court what was your picket
210 doing, what did you see him do, if anything? A. Just walking up and down in front of the door without speaking to anyone, because they are instructed by us not to speak to anyone.

Mr. Delman: I move to strike out the latter part, because——

(Motion granted.)

Mr. Boudin: I take an exception. This is an action against a union, not against Mr.

Del Pino, therefore our instructions are important. I think we are entitled to show what our instructions are. Will your Honor change the ruling?

The Court: No; sustained.

Mr. Boudin: I take an exception.

Cross-examination by Mr. Delman.

Q. You pass by in your car, isn't that right, the various places that are being picketed? A. No, sir.

Q. You have a car, have you not? A. Yes. 212

Q. You travel around in the car inspecting your territories? A. Correct.

Redirect examination by Mr. Boudin.

Q. Do you inspect each one from the car or do you get out and walk? A. I use my car to travel from place to place. I leave my car and go to the picket and ask him what is the situation.

Q. You park it somewhere in the neighborhood? A. Somewhere in the neighborhood.

Q. Then you go and inspect? A. Yes.

Q. And make a careful inspection? A. That is correct.

Q. Spend a little time there to see what is actually going on? A. Always, especially a picket line. 213

Q. You never observed in this picketing any disorder or anything of the sort? A. Never have.

Q. Nor have you ever noticed them talking to any customers or anybody else? A. They don't talk to any customers.

(No cross-examination.)

214 *Chris Panos—For Defendant—Direct.*

CHRIS PANOS, of 40 West 95th Street, New York City, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Boudin.

Q. Mr. Panos, what is your business or occupation? A. Associate labor chief, Local 302.

The Court: Labor chief?

The Witness: That is right.

215 Q. Local 302, Cafeteria Workers Union, the defendant in this case? A. That is correct.

Q. What are your duties as associate labor chief? A. I distribute employment among the membership of the union.

Q. Do you sometimes negotiate with employers? A. I do.

Q. Do you know Mr. Louis Loizides? A. Yes, for several years.

Q. Do you remember having any conversation with him? A. In reference to the case concerned?

Q. Yes. A. Yes.

Q. In reference to this case; when and where was that? A. It was about three or four weeks ago. I don't recollect the exact date.

216 Q. Three or four weeks after what? A. Ago.

Q. Ago? A. That is right.

Q. From now on, that is today is the 21st of June—am I to understand that was some time towards the end of May? A. That is correct; about that time.

Q. Where was the conversation? A. Over the phone.

Q. Did you call him or did he call you? A. No, I called him.

Q. When you called him what did you say to him? A. I referred him to our personal friendship——

Q. Oh, you are a personal friend— A. Yes.

Q. I did not know that: you have known Mr. Loizides for a long time? A. For a good many years, yes.

Q. You are a personal friend of his you now tell us? A. That is right.

Q. You called on him, referring to your personal friendship, then what else did you say to him? A. Suggested to him if it was possible we should get together and settle the difference between this 218
shop, his store, and the union, for the good and welfare of both concerned.

Q. What did he say? A. He said, "Well", he said, "I am willing to talk, but after all, I cannot very well do anything myself. I have partners", and so on and so forth, and I made the suggestion that maybe we should get together some time, we would talk things over. He says, "All right, any time you want".

Q. Well, did you go up there? A. Yes, I did.

Q. What did you say to him and what did he say to you? A. I went into his store about two hours later, I believe, with Del Pino together. I made the suggestion again and at that time he says, 219
"Well, between the time I spoke to you on the phone and now, I have consulted my lawyer and I don't want to talk any more about it".

Q. That was the nature of that conversation? A. I repeated again——

Q. Yes, I understand; you did not get any further, beyond that? A. That is all; we left.

By the Court.

Q. With whom were you talking? A. With Mr. Loizides.

Q. Which one? A. Mr. Louis Loizides.

(No cross-examination.)

Mr. Boudin: That is all; that is our case, if your Honor please.

Mr. Delman: The plaintiffs rest.

Mr. Boudin: We renew our motion to dismiss the complaint on the ground that
221 they have failed to make out the cause of action as pleaded, or any cause of action at all within the statute and the law governing the subject. If your Honor would like to have a more extended statement of our points, I would like to submit a memorandum.

The Court: I had this question last week, and I cannot do anything other than to follow the decision I made in that case.

Mr Boudin: The Supreme Court has changed its opinion, your Honor.

The Court: The same questions are involved, as I see it, whether or not they made
222 this arrangement in good faith, and I don't know how it can be determined at this time; it can only be determined by time.

Mr. Boudin: I hope your Honor does not consider yourself bound by your Honor's ruling. I seriously urge upon your Honor the reconsideration of your ruling.

The Court: That was my conviction at the close of the other trial and I do not see anything in this trial to change it.

Mr. Boudin: Will your Honor take a brief on the subject?

The Court: No. I will give judgment for the plaintiff.

Mr. Boudin: I take an exception, if your Honor please. I ask your Honor for a stay pending appeal.

The Court: What do you mean; permit the picketing?

Mr. Boudin: There is only one picket; there is no disorder or anything.

The Court: I will, if your opponent consents to it.

224 Mr. Delman: They removed them from the World Cafeteria. Why should this man be discriminated against?

Mr. Boudin: I think orderly picketing should be permitted to stay.

The Court: No, I don't think so, in this kind of a case. There are instances where they might be, and I have permitted them to stay.

Mr. Boudin: I know your Honor has, so have other Judges.

The Court: In this kind of case, no, unless they consent to it. In the other case the picketing was ceased.

225 Mr. Delman: In this case, it is a far more aggravated case, when they approach customers and call them pigs. We did not have that in the other case.

(Judgment for plaintiffs.)

226

Plaintiffs' Exhibit 1.

THIS AGREEMENT made this 22nd day of April, 1939, between ELIAS TSAKIRES, of 1348 St. Nicholas Avenue, New York City, KALLIS CONSTANTINON, of 2067 Mohegan Avenue, Bronx, N. Y., CHRIST LYMBOURIS, of 630 East 176th Street, Bronx, N. Y., ANGELO CONSTANTINE, of 1348 St. Nicholas Avenue, New York City, NICHOLAS RUSSOS, of 2231 Southern Boulevard, Bronx, N. Y., STELLA BELLAS, of 510 West 143rd Street, New York City; MARY YORWICK, of 303 East 53rd Street, New York City, JAMES LOIZIDES, of 751 East 178th
227 Street; Bronx, N. Y., and LOUIS LOIZIDES, of 2104 Crotona Parkway, Bronx, N. Y.

WITNESSETH:

WHEREAS, the parties to this agreement are desirous of being partners and sole owners of the business now conducted at 726 East Tremont Avenue, Bronx, N. Y., and known as THE COSMO CAFETERIA, and

WHEREAS, each of the parties to this agreement is an experienced cafeteria worker and fully understands the cafeteria business, and thus realizes the advantage of a partnership, where there will
228 be a saving of wages for outside help.

NOW, THEREFORE, it is mutually agreed as follows:

FIRST: The parties hereto shall, as partners and as more fully set forth hereinafter as to the rights of each party, engage in conducting THE COSMO CAFETERIA above referred to for a term commencing April 22, 1939, and terminating April 30, 1940.

SECOND: The firm name of the said partnership shall be THE COSMO CAFETERIA.

THIRD: A certificate of the parties hereto doing business under this name shall be filed immediately upon the execution of these presents in the office of the County Clerk of the County of Bronx, and in the office of any such other County Clerk as THE COSMO CAFETERIA may hereafter do business.

FOURTH: The business of said partnership shall be conducted at 726 East Tremont Avenue, Bronx, N. Y., and at such other place or places as the parties may by a majority vote agree. 230

FIFTH: The gross assets shall belong to the parties hereto in the proportions hereinafter enumerated and with the exceptions and provisos hereinafter enumerated.

SIXTH: The affairs of the partnership in all matters pertaining to the operation thereof shall be decided upon by the vote of any five (5) of them, by which the other four (4) hereby agree to abide unconditionally and hereby waiving any Court proceedings in case of so being overruled by the vote of five (5) of the partners.

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SEVENTH: In view of the different capabilities and duties that will be assigned to each partner, as well as the different degree of experience, the following are the percentages of the net income that each of the partners agrees to accept as his weekly drawing:

ELIAS TSAKIRES, ten (10%) per cent; KALLIS CONSTANTINON, nine (9%) per cent; CHRIST LYM-

232 *Plaintiffs' Exhibit 1.*

BOURIS, eleven (11%) per cent; ANGELO CONSTANTINE, ten (10%) per cent; NICHOLAS RUSSOS, eight (8%) per cent; STELLA BELLAS, five (5%) per cent; MARY YORWICK, five (5%) per cent; JAMES LOIZIDES, twenty-one (21%) per cent; LOUIS LOIZIDES, twenty-one (21%) per cent.

EIGHTH: In ascertaining the net profits, the following items are to be deducted from the gross income:

(a) The cost of goods sold.

233 (b) All operating expenses, to wit: rent, light and heat, taxes, insurance, interest, legal and professional expenses, repairs, advertising, bank charges, and other miscellaneous operating expenses.

NINTH: The value of the cafeteria together with the good will, is hereby fixed between the partners at Fifteen Thousand ($15,000.00) Dollars.

TENTH: Each of the parties hereto agree, in the event of loss during the period of any three (3) months, to contribute his or her proportionate percentage, in the same proportion as above enumerated, anent, the drawings, such contributions to
234 the losses to be either in cash or by means of deductions from the respective drawings of each.

ELEVENTH: The good will of the cafeteria, as well as the name and all the fixtures and equipment; are to remain the sole and exclusive property of LOUIS LOIZIDES, upon the expiration of this contract, unless each of the other partners pays to LOUIS LOIZIDES his or her proportionate percentage of the assets as the valuation set forth (Fifteen

Thousand ($15,000.00) Dollars), unless the business shows a loss by the end of the term of this contract, in which event the total loss shall be deducted from said Fifteen Thousand ($15,000.00) Dollars, in case the partners desire to exercise the option contained in this paragraph.

TWELFTH: The partners shall contribute in the proportions above referred to any additional capital that they may deem necessary for protecting or furthering the interests of the partnership.

THIRTEENTH: If any partner shall, with the written consent of the other partners, advance any monies to the partnership in excess of his contribution to the capital, the amount of such advance shall not be an increase of the capital of such partner or entitle him to any increase in his share of the profits, but the amounts of such advance shall be a debt due to such partner by the partnership and shall bear interest at the rate of six (6%) per cent per annum. Any such advance, with the accrued interest, shall be repaid by the partnership within thirty (30) days after the partnership shall have elected by notice in writing to repay the same or such partner shall have by notice in writing elected to demand the repayment thereof; in no event, however, shall the election of either the partnership or the particular partner be later than a month before the expiration of this agreement or any extension or renewal thereof. 236 237

FOURTEENTH: The account of the partnership shall be maintained under the name of LOUIS LOIZIDES, in such bank or banks as the partners from time to time shall elect and may by a majority vote elect that the checks drawn thereon, shall

238 *Plaintiff's Exhibit 1.*

be signed by one other partner in addition to LOUIS LOIZIDES.

FIFTEENTH: Any partner may withdraw his share of the net profits at the end of each or any fiscal year and if a partner shall not withdraw the whole or any part of his share of the net profits, he shall not be entitled to any interest upon any of his profits not withdrawn, nor shall any such profits be deemed an increase of the capital stock or entitle him to an increased percentage of his profits.

239 SIXTEENTH: Proper books of account shall be kept at all times and shall always be open to inspection of any of the partners hereto, and each partner shall enter or cause to be entered therein a full and accurate account of all his transactions in behalf of the partnership.

SEVENTEENTH: All books of the partnership shall be kept at the place of business of the partnership and each partner shall have immediate and unstinted access thereto at all times.

EIGHTEENTH: Each partner shall at all times pay and satisfy his own personal debts; devote all his time and attention to the business of the part-
240 nership; inform the other partners of all transactions in behalf of the partnership; may not assign or mortgage his share in the partnership or any part thereof or enter into any agreement, as a result of which any person, firm or corporation shall become interested with him therein.

NINETEENTH: None of the partners shall execute any notes in the name of the partnership unless by vote of five (5) of the partners, which vote shall be recorded in any of the books of the partnership and signed by said five (5).

TWENTIETH: Any partner who shall violate any of the terms, provisions and conditions of this agreement shall keep harmless the partnership property and shall also indemnify the other partners from any and all claims, demands and actions which may arise out of or by reason of any such violation of any of the terms, provisions or conditions thereof.

TWENTY-FIRST: If any partner shall be guilty of misconduct of such a character as to render it impracticable for the partners to carry on the partnership business, the offending partner may be expelled from the partnership upon the vote of a majority of the partners, and upon his expulsion he is to be paid one-half (½) of the share of the net profits received by him during the preceding six (6) months, as well as the amount of the expelled partner's share of the capital in the partnership, less his proportionate share of losses, if any. 242

TWENTY-SECOND: At the termination of the partnership, by the extension of its term or by reason of any other cause, a full and accurate inventory shall be prepared and the assets, liabilities and income, gross and net, shall be ascertained, and in pursuance of the provisions above outlined, the assets then remaining shall be divided into proportion as above enumerated, and in accordance with all the terms, conditions and provisos above referred to. 243

TWENTY-THIRD: If any dispute shall arise between the partners herein and they agree to arbitrate same, each partner appointing one arbitrator, and the majority of the arbitrators shall have

244 *Plaintiffs' Exhibit 1.*

the right to decide, and the right to appeal from the decision of said arbitrators, to any Court or any other body, is hereby expressly waived.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

JAMES LOIZIDES
STELLA BELLAS
MARIE YORWICK
NICK ROUSSOS
245 LOUIS LOIZIDES
KALLIS CONSTANTINON
ELIAS TSAKIRES
CHRIST LYMBOURIS
ANGELO CONSTANTINE

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:
CITY OF NEW YORK)

On this 22nd day of April, 1939, before me personally appeared ELIAS TSAKIRES, KALLAS CONSTANTINON, CHRIST LYMBOURIS, ANGELO CONSTANTINE, NICHOLAS RUSSOS, STELLA BELLAS, MARY YORWICK, JAMES LOIZIDES and LOUIS LOIZIDES, to
246 me known and known to me to be the individuals described in and who executed the foregoing agreement, and they thereupon duly acknowledged to me that they executed the same.

JOHN CANARAS
John Canaras
Notary Public, Bronx County
(Seal) Bronx County Clerk No. 162
New York County Clerk's No. 1072
Commission expires March 30, 1940

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Plaintiffs' Exhibit 2.

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:
CITY OF NEW YORK

The undersigned do hereby certify that they now conduct or transact business under the name and style of THE COSMO CAFETERIA, at 726 East Tremont Avenue, Borough of Bronx, City of New York and do further certify that the true or real full names of the persons conducting the said business, with the residence and business address and the age of any who may be infants, are as follows:

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Name	*Residence*	*Business Address*
ELIAS TSAKIRES	1348 St. Nicholas Ave. N. Y.	726 E. Tremont Ave. Bx.
KALLIS CONSTANTINON	2067 Mohegan Ave. Bronx.	726 E. Tremont Ave. Bx.
CHRIST LYMBOURIS	630 E. 176th St. Bronx	726 E. Tremont Ave. Bx.
ANGELO CONSTANTINE	1348 St. Nicholas Ave. N. Y.	726 E. Tremont Ave. Bx.
NICHOLAS RUSSOS'	2231 Southern Blvd. Bronx	726 E. Tremont Ave. Bx.
STELLA BELLAS	510 W. 143rd St. N. Y. C.	726 E. Tremont Ave. Bx.
MARIE YORWICK	303 East 53rd St. N. Y. C.	726 E. Tremont Ave. Bx.
JAMES LOIZIDES	751 East 178th St. Bronx	726 E. Tremont Ave. Bx.
LOUIS LOIZIDES	2104 Crotona Pkway. Bronx	726 E. Tremont Ave. Bx.

IN WITNESS WHEREOF we have this 22nd day of April, 1939, made and signed the certificate.

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ELIAS TSAKIRES
KALLIS CONSTANTINON
CHRIST LYMBOURIS
ANGELO CONSTANTINE
NICHOLAS RUSSOS
STELLA BELLAS
MARIE YORWICK
JAMES LOIZIDES
LOUIS LOIZIDES

250 *Plaintiffs' Exhibit 2.*

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:
CITY OF NEW YORK }

On this 22nd day of April, 1939, before me personally appeared ELIAS TSAKIRES, KALLIS CONSTANTINON, CHRIST LYMBOURIS, ANGELO CONSTANTINE, NICHOLAS RUSSOS, STELLA BELLAS, MARIE YORWICK, JAMES LOIZIDES and LOUIS LOIZIDES, to me known and known to me to be the individuals described in and who executed the foregoing certificate and they thereupon duly acknowledged to me that they executed the same.

251

JOHN CANARAS
Notary Public, B'x Co.
B'x Co. Cl. #162
N. Y. Co. Cl. #1072
Com. exp. March 30, 1940

No. 35015

STATE OF NEW YORK, }
COUNTY OF BRONX, } ss.:

I, MICHAEL B. MCHUGH, Clerk of the said County and Clerk of the Supreme Court of said State for said County, and Clerk of the County Court for said County, DO CERTIFY, That I have
252 compared the preceding with the original

Certificate of conducting business
under an assumed name

on file in my office, and that the same is a correct transcript therefrom, and of the whole of such original.

Indorsed Filed April 26, 1939.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 19 day of May, 1939.

MICHAEL B. MCHUGH
Clerk.

(Seal)

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Plaintiffs' Exhibit 3.

THIS AGREEMENT between Bee Realty Corp., a domestic corporation, 1953 Clinton Avenue, Bronx, New York, as Landlord, and Louis Loizides, residing at 2104 Crotona Parkway, Bronx, New York, as Tenant

Witnesseth: That the said Landlord has let unto the said Tenant and the said Tenant has hired from the said Landlord the corner store and store on Clinton Avenue now occupied by Chinese hand laundry and the use of the basement thereunder of premises known as 1953 Clinton Avenue, Bronx, New York for the term of Eight (8) Years 254
from August 1st, 1936 to July 31st, 1944 to be used and occupied only for a restaurant and cafeteria upon the conditions and covenants following:

1st. That the Tenant shall pay an annual rent of Thirty-One Hundred and Twenty Dollars ($3120.) for the period from August 1st, 1936 to July 31st, 1938, payable in equal monthly installments of Two Hundred and Sixty Dollars ($260.) each on the first day of each and every month; An annual rent of Thirty-Three Hundred Dollars ($3300.) for the period from August 1st, 1938 to July 31st, 1940, payable in equal monthly installments of Two Hundred and Seventy-Five Dollars 255
($275.) each on the first day of each and every month; An annual rent of Thirty-Six Hundred Dollars ($3600.), payable in equal monthly installments of Three Hundred Dollars ($300.) each on the first day of each and every month for the period from August 1st, 1940 to July 31st, 1942 and an annual rent of Thirty-Nine Hundred Dollars ($3900.) payable in equal monthly installments of Three Hundred and Twenty-Five Dol-

lars ($325.) each on the first day of each and every month for the period from August 1st, 1942 to July 31st, 1944.

2ND. That the tenant shall take good care of the premises and shall, at his own cost and expense make all repairs, except structural, and to water pipes and steam pipes and at the end or other expiration of the term, shall deliver up the demised premises in good order or condition, damages by the elements excepted.

257 3RD. That the Tenant shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and City Government and of any and all their Departments and Bureaus applicable to said premises, for the correction, prevention, and abatement of nuisances or other grievances, in, upon, or connected with said premises during said term; and shall also promptly comply with and execute all rules, orders and regulations of the New York Board of Fire Underwriters for the prevention of fires at his own cost and expense.

4TH. That the Tenant, successors, heirs, executors or administrators shall not assign this agree-
258 ment, or underlet or underlease the premises, or any part thereof, or make any alterations on the premises, without the Landlord's consent in writing; or occupy, or permit or suffer the same to be occupied for any business or purpose deemed disreputable or extra-hazardous on account of fire, under the penalty of damages and forfeiture, and in the event of a breach thereof, the term herein shall immediately cease and determine at the

option of the Landlord as if it were the expiration of the original term.

5TH. That the Tenant shall, in case of fire, give immediate notice thereof to the Landlord, who shall thereupon cause the damage to be repaired with reasonable speed; but if the premises be so damaged that the Landlord shall decide to rebuild, the term shall cease and the accrued rent be paid up to the time of the fire.

6TH. The said Tenant agrees that the said Landlord and its Agents, and other representatives, shall have the right to enter into and upon 260
said premises, or any part thereof, at all reasonable hours for the purpose of examining the same, or making such repairs or alterations therein as may be necessary for the safety and preservation thereof.

7TH. The Tenant also agrees to permit the Landlord or its Agents to show the premises to persons wishing to hire or purchase the same; and the Tenant further agrees that on and after May 1st, 1944 next preceding the expiration of the term hereby granted, the Landlord or its Agents shall have the right to place notices on the front of said premises, or any part thereof, offering the prem- 261
ises "To Let" or "For Sale," and the Tenant hereby agrees to permit the same to remain thereon without hindrance or molestation.

8TH. That if the said premises, or any part thereof shall be deserted or become vacant during said term, or if any default be made in the payment of the said rent or any part thereof, or if any default be made in the performance of any of the covenants herein contained, the Landlord or repre-

262 *Plaintiffs' Exhibit 3.*

sentatives may re-enter the said premises by force, summary proceedings or otherwise, and remove all persons therefrom, without being liable to prosecution therefor, and the Tenant hereby expressly waives the service of any notice in writing of intention to re-enter, and the Tenant shall pay at the same time as the rent becomes payable under the terms hereof a sum equivalent to the rent reserved herein, and the Landlord may rent the premises on behalf of the Tenant, reserving the right to rent the premises for a longer period of time than fixed in the original lease without re-
263 leasing the original Tenant from any liability, applying any moneys collected, first to the expense of resuming or obtaining possession, second to restoring the premises to a rentable condition, and then to the payment of the rent and all other charges due and to grow due to the Landlord, any surplus to be paid to the Tenant, who shall remain liable for any deficiency.

9TH. That in case of any damage or injury occurring to the glass or damage and injury to the said premises of any kind whatsoever, said damage or injury being caused by the carelessness, negligence, or improper conduct on the part of the said Tenant, his Agents or Employees, then the
264 said Tenant shall cause the said damage or injury to be repaired as speedily as possible at his own cost and expense.

10TH. That the Tenant shall neither encumber nor obstruct the sidewalk in front of, entrance to, or halls and stairs of said building, nor allow the same to be obstructed or encumbered in any manner.

11TH. The Tenant shall neither place, or cause, or allow to be placed, any sign or signs of any kind whatsoever at, in or about the entrance to said premises or any other part of same, except in or at such place or places as may be indicated by the Landlord and consented to by it in writing. And in case the Landlord or its representatives shall deem it necessary to remove any such sign or signs in order to paint the said premises or make any other repairs, alterations or improvements in or upon said premises or any part thereof, it shall have the right to do so, providing it cause the same to be removed and replaced at its own expense, whenever the said repairs, alterations or improvements shall have been completed.

12TH. That the Landlord is exempt from any and all liability for any damage or injury to person or property caused by or resulting from steam, electricity, gas, water, rain, ice or snow, or any leak or flow from or into any part of said building or from any damage or injury resulting or arising from any other cause or happening whatsoever and whether or not said damage or injury be caused by or due to the negligence of the Landlord or the Landlord's agent, servants, employees or other tenants.

13TH. That if default be made in any of the covenants herein contained, then it shall be lawful for the said Landlord to re-enter the said premises, and the same to have again, re-possess and enjoy. The said Tenant hereby expressly waives the service of any notice in writing of intention to re-enter, as provided for in 998 of the Civil Practice Act, or by any law of the State of New York.

268 *Plaintiffs' Exhibit 3.*

14TH. That this instrument shall not be a lien against said premises in respect to any mortgages that are now on or that hereafter may be placed against said premises, and that the recording of such mortgage or mortgages shall have preference and precedence and be superior and prior in lien of this lease, irrespective of the date of recording and the Tenant agrees to execute any such instrument without cost, which may be deemed necessary or desirable to further effect the subordination of this lease to any such mortgage or mortgages, and a refusal to execute such instruments shall entitle
269 the Landlord, its assigns and legal representatives to the option of cancelling this lease without incurring any expense or damage and the term hereby granted is expressly limited accordingly.

15TH. The Tenant has this day deposited with the Landlord the sum of Five Hundred and Twenty Dollars ($520.) as security for the full and faithful performance of and compliance with all the terms and conditions of this lease upon the Tenant's part to be performed, which said security shall not be regarded as trust funds, the relationship between the Landlord and the Tenant being that of debtor and creditor only, and the said sum shall be returned to the Tenant after the time fixed
270 as the expiration of the term herein, provided the Tenant has fully and faithfully carried out all of the terms, covenants and conditions on the Tenant's part to be performed, and it is hereby understood and agreed that if the Landlord shall sell or transfer the premises covered by the within lease and assign or transfer the within lease to the new landlord, the Tenant hereby expressly agrees that the Landlord may transfer, assign and turn over

the security deposited under this lease, to the new landlord, and the Tenant hereby releases and relieves the Landlord herein from any and all personal liability for the return of the said security and the Tenant agrees to look to the new landlord solely for the return of the said security, and it is agreed that this shall apply to every transfer or assignment made of the security to a new landlord.

16TH. That the security deposited under this lease shall not be mortgaged, assigned or encumbered by the Tenant without the written consent of the Landlord, same, however, to bear interest at the rate of 4% per annum, payable annually.

17TH. It is expressly understood and agreed that in case the demised premises shall be deserted or vacated, or if default be made in the payment of the rent or any part thereof as herein specified, or if, without the consent of the Landlord, the Tenant shall sell, assign, or mortgage this lease or if default be made in the performance of any of the covenants and agreements in this lease contained on the part of the Tenant to be kept performed, or if the Tenant shall fail to comply with any of the statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and City Government or of any and all their Departments and Bureaus applicable to said premises, or hereafter established as herein provided, or if the Tenant shall file a petition in bankruptcy or be adjudicated a bankrupt or make an assignment for the benefit of creditors or take advantage of any insolvency act, the Landlord may, if it so elect, at any time thereafter terminate this lease and the term hereof, on giving to the Tenant five days' notice in writing of its intention so to do, and this

lease and the term thereof shall expire and come to an end on the date fixed in such notice as if said date were the date originally fixed in this lease for the expiration thereof. Such notice may be given by mail to the Tenant addressed to the demised premises.

18TH. The Tenant shall pay to the Landlord the rent or charge, which may, during the demised term, be assessed or imposed for the water used or consumed in or on the said premises, whether determined by meter or otherwise, as soon as and
275 when the same way be assessed or imposed, and will also pay the expenses for the setting of a water meter in the said premises should the latter be required. If such rent or charge or expenses are not so paid the same shall be added to the next month's rent thereafter to become due. The landlord, however, to pay the cost, if any, for the meter itself.

19TH. That the Tenant will not nor permit undertenants to do anything in said premises, or bring anything into said premises, or permit anything to be brought into said premises or to be kept therein, which will in any way increase the
276 rate of fire insurance on said demised premises, nor use the demised premises or any part thereof, nor suffer or permit their use for any business or purpose which would cause an increase in the rate of fire insurance on said building, and the Tenant agrees to pay on demand any such increase.

20TH. The failure of the Landlord to insist upon a strict performance of any of the terms, conditions and covenants herein, shall not be

deemed a waiver of any rights or remedies that the Landlord may have, and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.

21ST. That should the land whereon said building stand or any part thereof be condemned for public use, then in that event, upon the taking of the same for such public use, this lease, at the option of the Landlord, shall become null and void, and the term cease and come to an end, anything herein contained to the contrary notwithstanding.

22ND. If after default in payment of rent or 278
violation of any other provision of this lease, or upon the expiration of this lease, the Tenant moves out or is dispossessed and fails to remove any trade fixtures or other property prior to such said default, removal, expiration of lease, or prior to the issuance of the final order or execution of the warrant, then and in that event, the said fixtures and property shall be deemed abandoned by the said Tenant and shall become the property of the Landlord.

23RD. In the event that the relation of the Landlord and Tenant may cease or terminate by reason of the re-entry of the Landlord under the terms 279
and covenants contained in this lease or by the ejectment of the Tenant by summary proceedings or otherwise, or after the abandonment of the premises by the Tenant, it is hereby agreed that the Tenant shall remain liable and shall pay in monthly payments the rent which accrues subsequent to the re-entry by the Landlord, and the Tenant expressly agrees to pay as damages for the breach of the covenants herein contained, the dif-

ference between the rent reserved and the rent collected and received, if any, by the Landlord during the remainder of the unexpired term, such difference or deficiency between the rent herein reserved and the rent collected, if any, shall become due and payable in monthly payments during the remainder of the unexpired term, as the amounts of such difference or deficiency shall from time to time be ascertained; and the Tenant waives and will waive all right to trial by jury in any summary proceedings hereafter instituted by the Landlord against the Tenant in respect to the
281 demised premises or in any action brought to recover rent or damages hereunder.

24TH. The Tenant waives all rights to redeem under §1437 of the Civil Practice Act.

25TH. The tenant shall obtain, pay for and deliver to the landlord a proper plate glass insurance policy insuring all the plate glass contained in the premises herein demised. In the event that the tenant shall fail to provide such insurance policy, the landlord may and hereby is authorized to obtain such insurance and the tenant agrees to pay for the same when demanded by the landlord in accordance with the schedule rendered by the
282 insurance company and if unpaid, such insurance cost may be added to the monthly rent next to become due and shall be collected as additional rent.

26TH. As a consideration of the granting of this lease, the Tenant agrees to install and complete at a date no later than September 1st, 1936 a new store front in accordance with the plans and specifications to be supplied by the Tenant and approved by the Landlord in writing prior to the

starting of such installation. Releases and paid receipts from the contractor or contractors doing the work on the above store front and in the store for the Tenant are to be given to the Landlord upon completion of the work. All City, State and Governmental permits pertaining to the above alteration are to be obtained and paid for by the Tenant and further all of the above work is to be covered by a completion bond in the sum of Fifteen Hundred Dollars ($1500.) supplied and paid for by the Tenant in favor of the Landlord.

27TH. It is understood that the Tenant shall remove at his own cost and expense all snow and ice from the sidewalk in front of the premises hereby leased within four hours after snow shall cease to fall or ice shall have formed. 284

28TH. The Tenant may erect trade signs on the demised premises made of metal and neon as approved by the landlord in writing.

29TH. All artificial light and gas is to be at the expense of the Tenant and it is understood and agreed that the Tenant is to furnish and install and it is understood and agreed that the Tenant is to furnish and install at his own cost and expense all electrical and gas fixtures and is to pay for all the electricity and gas consumed by him on the demised premises. 285

30TH. The landlord will furnish to the Tenant without additional charge, steam heat during the winter months during the day time and allow to keep the said heat up at his own expense during the Tenant access to the boiler and permit him to

286 *Plaintiffs' Exhibit 3.*

the times that the Landlord does not usually supply same. It is further understood and agreed that in case it shall become necessary or proper at any time, from accident, or for improving the condition or operation of the heating apparatus, plumbing, boilers, machinery, electric plant, or anything appertaining thereto, to omit the operating of said light or heating apparatus or other service, until all necessary repairs or improvements shall have been made and completed, the party of the first part shall be at liberty to do the same without in any manner or respect affecting
287 or modifying the obligations of the said Tenant herein contained, or rendering itself liable for any damage or offset by reason thereof.

31ST. The Landlord agrees to supply the tenant with hot water as normally supplied to tenants of apartments.

32ND. The Landlord agrees not to lease as a restaurant or cafeteria any store owned by it in said premises so long as this lease be in full force and effect.

And the said Landlord doth covenant that the said Tenant on paying the said yearly rent, and
288 performing the covenants aforesaid, shall and may peacefully and quietly have, hold and enjoy the said demised premises for the term aforesaid, provided, however, that this covenant shall be conditioned upon the retention of title to the premises by the Landlord.

AND IT IS MUTUALLY UNDERSTOOD AND AGREED that the covenants and agreements contained in the within lease shall be binding upon the parties

hereto and upon their respective successors, heirs, executors and administrators.

IN WITNESS WHEREOF, the parties have interchangeably set their hands and seals (or caused these presents to be signed by their proper corporate officers and caused their proper corporate seal to be hereto affixed) this 8th day of May, 1936.

Signed, sealed and delivered
in the presence of

BEE REALTY CORP.,
By BENJAMIN BIRNBAUM L. S. 290
(Seal) Treas.
Landlord.

LOUIS LOIZIDES L. S.
Tenant.

STATE OF NEW YORK, }
COUNTY OF BRONX, } ss.:

On the 13th day of May, 1936, before me personally came LOUIS LOIZIDES, to me known and known to me to be the individual described in, and who executed, the foregoing instrument, and acknowledged to me that he executed the same. 291

MAX RUBIN
(Seal) Notary Public
Bronx Co. Clerk's No. 145, Reg. No. 145R37
Commission Expires March 30, 1937
Certificate filed Register's Office
Bronx County

292 *Plaintiffs' Exhibit 3.*

STATE OF NEW YORK, }
COUNTY OF BRONX, } ss.:

On the 13th day of May, 1936, before me personally came BENJAMIN BIRNBAUM, to me known, who, being by me duly sworn, did depose and say that he resides at 1953 Clinton Ave., the Borough of the Bronx, City of New York; that he is the Treasurer of Bee Realty Corp., the corporation mentioned in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is
293 such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

MAX RUBIN
(Seal) Notary Public
Bronx Co. Clerk's No. 145, Reg. No. 145R37
Commission Expires March 30, 1937
Certificate filed Register's Office
Bronx County

Defendants' Exhibit A for Identification.

294 Promissory note signed by Tsakires to Loizides.

(Omitted pursuant to stipulation at page 100.)

295

Statement as to Evidence.

The foregoing case contains all of the evidence adduced and proceedings had upon the trial herein, together with the exceptions of both sides taken on said trial.

Affidavit of No Opinion.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

IRVING R. FEINBERG, being duly sworn, says: 296

That he is an attorney associated with Boudin, Cohn & Glickstein, the attorneys for the defendants-appellants in this action, and is familiar with the same. That no opinion in writing was rendered herein by the Justice who presided at the trial of this action.

IRVING R. FEINBERG.

Sworn to before me this
15th day of January, 1942.

JEAN TAYLOR,
Notary Public,
Bronx County. 297
Certificate filed in New York County.
Comm. expires March 30, 1943.

298

Stipulation as to Defendants' Exhibit A.

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

ELIAS TSAKIRES, KALLIS CONSTANTINON, CHRIST LYMBOURIS, ANGELO CONSTANTINE, NICHOLAS RUSSOS, STELLA BELLAS, MARY YORWICK, JAMES LOIZIDES and LOUIS LOIZIDES, co-partners trading under the name of THE COSMOS CAFETERIA,
Plaintiffs,

299 against

WILLIAM MESEVICH, President of the CAFETERIA EMPLOYEES UNION, LOCAL, 302, an unincorporated association having more than seven members, individually and as President of said union,
Defendants.

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties hereto, that Defendant's Exhibit A consists of a promissory note dated April 2nd, 1939, in the sum of Fifteen Hundred ($1500.00) Dollars, made by Elias Tsakires, as maker, to Louis Loizides, as
300 payee, due April 2nd, 1940.

Dated: New York, N. Y., January 17, 1942.

DAVID L. DELMAN,
Attorney for Plaintiffs.

BOUDIN, COHN & GLICKSTEIN,
Attorneys for Defendants.

301

Stipulation Settling Case.

It is hereby stipulated that the foregoing record contains all the evidence given upon the trial of this action, together with the exceptions of both sides taken on said trial, and that the same be settled and ordered on file as the case on appeal and annexed to the judgment roll herein.

Dated, New York, January 17, 1942.

Boudin, Cohn & Glicksteis,
Attorneys for Defendants-Appellants.

David L. Delman, 302
Attorney for Plaintiffs-Respondents.

Order Settling Case.

On the above stipulation, I hereby certify that the foregoing record contains all the evidence given on the trial of this action, together with the exceptions of both sides taken on said trial and the said record is hereby settled and ordered on file as the case on appeal in this action.

Dated, New York, January 19, 1942.

303

Timothy A. Leary,
J. S. C.

304

Stipulation Waiving Certification.

Pursuant to Section 170 of the Civil Practice Act,

IT IS HEREBY STIPULATED that the foregoing consists of true and correct copies of the notice of appeal, judgment roll, and case and exceptions as settled, and of the whole thereof, now on file in the office of the Clerk of the County of Bronx, and that certification thereof by the Clerk of said County, pursuant to Section 616, is hereby waived.

Dated, New York, January 17, 1942.

305

BOUDIN, COHN & GLICKSTEIN,
Attorneys for Defendants-Appellants.

DAVID L. DELMAN,
Attorney for Plaintiffs-Respondents.

Order Filing Record in Appellate Division.

Purusant to Section 616 of the Civil Practice Act, it is

ORDERED that the foregoing printed record be
306 filed in the office of the Clerk of the Appellate Division of the Supreme Court in the First Department.

Dated, New York, January 19, 1942.

TIMOTHY A. LEARY,
J. S. C.

307

Notice of Appeal to Court of Appeals.

SUPREME COURT

OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

ELIAS TSAKIRES, KALLIS CONSTANTINON, CHRIST LYMBOURIS, ANGELO CONSTANTINE, NICHOLAS RUSSOS, STELLA BELLAS, MARY YORWICK, JAMES LOIZIDES and LOUIS LOIZIDES, co-partners trading under the name of the COSMOS CAFETERIA,

Plaintiffs,

308

against

WILLIAM MESEVICH, President of the CAFETERIA EMPLOYEES UNION, LOCAL 302, an unincorporated association having more than seven members, individually and as president of said union,

Defendants.

Sirs:

PLEASE TAKE NOTICE that the defendant William Mesevich, President of the Cafeteria ~~Employees~~ Union Local 302, hereby appeals to the Court of Appeals of the State of New York from the judgment dated the 17th day of April, 1942, and entered in the office of the Clerk of the County of Bronx on the said date, which judgment was entered upon an order of the Appellate Division of the Supreme Court dated the 10th day of April, 1942, and entered in the office of the Clerk of said Court on said date, affirming, two Justices dissenting, the judgment entered in the office of the Clerk of the County of Bronx on the 20th day of Sep- 309

310 *Notice of Appeal to Court of Appeals.*

tember, 1939; and that this appeal is taken from the whole of said judgment and order and from each and every part thereof.

PLEASE TAKE FURTHER NOTICE that the appeal is taken upon the following ground, among others:

That said judgment and order are violative of the Constitution of the United States, particularly Amendments I, V and XIV thereof, and the Constitution of the State of New York, particularly Article I, Section 8, thereof.

311 Dated, April 22, 1942.

Yours, etc.,

BOUDIN, COHN & GLICKSTEIN,
Attorneys for Defendant,
20 West 43rd Street,
Borough of Manhattan,
City of New York.

To:

MICHAEL B. MCHUGH,
Clerk of County of Bronx.

DAVID L. DELMAN, Esq.,
312 Attorney for Plaintiffs,
261 Broadway,
Borough of Manhattan,
City of New York.

313

Order of Affirmance.

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 10th day of April, 1942.

Present—Hon. Francis Martin,
Presiding Justice.
" Alfred H. Townley,
" Edward S. Dore,
" Albert Cohn,
" Joseph M. Callahan,
Justices.

314

Elias Tsakires, Kallis Constantinon, Christ Lymbouris, Angelo Constantine, Nicholas Russos, Stella Bellas, Mary Yorwick (etc. et al), Respondents, against William Mesevich, etc., Appellants.	11536

An appeal having been taken to this Court by the defendants from a judgment of the Supreme Court, Bronx County, entered on the 20th day of September, 1939, and said appeal having been argued by Mr. Irving Robert Feinberg, of counsel for the appellants, and by Mr. David L. Delman, of counsel for the respondents; and due deliberation having been had thereon,

315

It is ordered and adjudged that the judgment so appealed from be and the same is hereby, in all

316 *Order of Affirmance.*

things, affirmed; and that the respondents recover of the appellants the costs of this appeal. Two of the Justices dissent and vote to reverse and dismiss the complaint.

Enter,

F. M.,

Judgment of Affirmance.

SUPREME COURT

317 OF THE STATE OF NEW YORK,

COUNTY OF BRONX.

ELIAS TSAKIRES, KALLIS CONSTANTINON, CHRIST LYMBOURIS, ANGELO CONSTANTINE, NICHOLAS RUSSOS, STELLA BELLAS, MARY YORWICK, JAMES LOIZIDES and LOUIS LOIZIDES, co-partners trading under the name of the COSMOS CAFETERIA, Plaintiffs.	Plaintiff's Address 726 E. Tremont Ave. Bronx, New York
against	
WILLIAM MESEVICH, President of the CAFETERIA EMPLOYEES UNION, LOCAL 302, an unincorporated association having more than seven members, individually and as president of said union, Defendants.	Defendant's Address 701 Eighth Avenue New York City

318

The defendants having appealed to the Appellate Division from a judgment in favor of the plaintiffs, enjoining the defendants permanently from picketing the defendant's place of business and the Appellate Division, by its order, dated

April 10, 1942, having affirmed the judgment together with costs and disbursements and the costs having been taxed at $76.47, it is

On motion of David L. Delman, attorney for the plaintiffs,

ORDERED, that the plaintiffs, Elias Tsakires, Kallis Constantinon, Christ Lymbouris, Angelo Constantine, Nicholas Russos, Stella Bellas, Mary Yorwick, James Loizides and Louis Loizides, co-partners trading under the name of the Cosmos Cafeteria, have judgment against the defendant in 320
the sum of $76.47, and the plaintiffs have execution therefor.

MICHAEL B. McHUGH,
Clerk.

Dated April 17, 1942.

Memorandum Opinion of Appellate Division.

(N. Y. Law Journal, April 11, 1942.)

By MARTIN, P.J.; TOWNLEY, DORE, COHN and CALLAHAN, JJ.

321

11536. Tsakires et al., res. v. Mesevich etc., ap.—Judgment affirmed with costs. No opinion. (Dore and Callahan, JJ., dissent and vote to reverse and dismiss the complaint, on the ground that the alleged partnerships among the plaintiffs are not bona fide. The testimony clearly indicates that the relationship of employer and employee continued to exist among these parties.) Order filed.

322

Affidavit of No Opinion by Appellate Division.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

IRVING R. FEINBERG, being duly sworn, deposes and says that he is an attorney associated with Boudin, Cohn & Glickstein, the attorneys for the defendant-appellant in this action; that no opinion was rendered by the Appellate Division of the Supreme Court for the First Department in affirming the judgment appealed from herein, except the memorandum printed hereinabove.

323 IRVING R. FEINBERG.

Sworn to before me this
day of June, 1942.

JEAN TAYLOR,
Notary Public,
New York County.
Commission expires March 30, 1944.

324

325

Stipulation Waiving Certification in Court of Appeals.

Pursuant to Section 170 of the Civil Practice Act, it is hereby stipulated that the foregoing consists of true and correct copies of the record on appeal to the Appellate Division, the notice of appeal to the Court of Appeals, the order of affirmance, the judgment of affirmance, and the memorandum of the Appellate Division of the Supreme Court for the First Department, and the whole thereof, now on file in the office of the Clerk of the County of Bronx; and certification thereof, pursuant to Section 616 of the Civil Practice Act, is hereby waived. 326

Dated, New York, June , 1942.

BOUDIN, COHN & GLICKSTEIN,
Attorneys for Defendant-Appellant.

DAVID L. DELMAN,
Attorney for Plaintiffs-Respondents.

327

331

Remittitur.

COURT OF APPEALS

STATE OF NEW YORK, ss.:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 21st day of January, in the year of our Lord one thousand nine hundred and forty-three, before the Judges of said Court.

Witness,
The Honorable IRVING LEHMAN,
Chief Justice, Presiding.
John Ludden, Clerk.

332

Remittitur January 21, 1943

ELIAS TSAKIRES and ors.,
co-partners tc.,
Respondents,

against

WILLIAM MESEVICH, President of the Cafeteria Employees Union Local 302, an unincorporated association tc.,
Appellant.

333

BE IT REMEMBERED, That on the 27th day of June in the year of our Lord one thousand nine hundred and forty-two William Mesevich, President of Cafeteria Employees Union Local 302, tc., the appellant in this cause, came here unto the Court of Appeals, by Boudin, Cohn and Glick-

stein, his attorneys, and filed in the said Court a Notice of Appeal and return thereto from the judgment and order of the Appellate Division of the Supreme Court in and for the First Judicial Department. And Elias Tsakires and ors., copartners, tc., the respondents in said cause, afterwards appeared in said Court of Appeals by David L. Delman, their attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

335 Whereupon, The said Court of Appeals having heard this cause argued by Mr. Louis B. Boudin of counsel for the appellant, and submitted by counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, with costs.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said judg-
336 ment be affirmed with costs as aforesaid.

And hereupon, as well the Notice of Appeal, and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and

provided, to be enforced according to law, and which record now remains in the said Supreme Court before the Justices thereof, etc.

JOHN LUDDEN
Clerk of the Court of Appeals
of the State of New York

COURT OF APPEALS, CLERK'S OFFICE
Albany, January 21, 1943.

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of 338
Appeals, with the papers originally filed therein, attached thereto.

JOHN LUDDEN
(Seal) Clerk

No. 74381

STATE OF NEW YORK, }
COUNTY OF BRONX, } ss.:

I, MICHAEL B. McHUGH, Clerk of the said County and Clerk of the Supreme Court of said State for said County, and Clerk of the County Court for said County, DO CERTIFY, That I have compared the preceding with the original Remittitur of Court of Appeals on file in my office, and 339
that the same is a correct transcript therefrom, and of the whole of such original.

Indorsed Filed Feb. 18, 1943

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 26 day of Feb,, 1943.

MICHAEL B. McHUGH
(Seal) Clerk.

340

Clerk's Certificate.

No. 52

STATE OF NEW YORK, }
COUNTY OF BRONX, } ss.:

ELIAS TSAKIRES and ors., Co-partners, etc.,
Respondents,
against
WILLIAM MESEVICH, Pres. of the Cafeteria Employees Union, etc.,
Appellants.

341 I, MICHAEL B. McHUGH, Clerk of the Supreme Court in and for said County, and Clerk of the Supreme Court of said State, and Clerk of the County Court, County of Bronx, do hereby certify that the foregoing consists of certified copies of the Notice of Appeal, Judgment Roll, Record on appeal and the remittitur dated January 21st, 1943 of the Court of Appeals, State of New York, on file in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this 17th day of March, A. D. 1943.

(Seal)

342 MICHAEL B. McHUGH
Clerk.

343

Certificate as to Opinion.

STATE OF NEW YORK
COURT OF APPEALS,
STATE REPORTER'S OFFICE } ss.:

I, E. J. DIMOCK, Reporter of the Court of Appeals of the State of New York, do hereby certify that I have compared the annexed copy of opinion in the case of Tsakires v. Mesevich, decided by the Court of Appeals on the twenty-first day of January, 1943, with the official opinion rendered in such case, and I further certify that the same is a true and correct copy of said opinion and of each and every part thereof.

344

IN WITNESS WHEREOF, I have hereunto affixed my signature as Reporter of the Court of Appeals, at the City of Albany, in the State of New York, this eighth day of March, 1943.

(Seal)

E. J. DIMOCK
As Reporter of the Court of Appeals of the State of New York.

Attest:

L. S. JOHN LUDDEN
Clerk of the Court of Appeals.

345

STATE OF NEW YORK
COURT OF APPEALS. }

I, IRVING LEHMAN, Chief Judge of the Court of Appeals of the State of New York, the highest Appellate Court and Court of Record in and for said State, do hereby certify that John Ludden

is the clerk of said court, having custody of the seal of said court and of the decisions, minutes and records thereof, and that E. J. Dimock is the official reporter of said court, having custody of the official opinions, written and handed down by said court and the members thereof, and of the official publication and reports thereof; and I further certify that the attestation and authentication, by said clerk and said reporter of the annexed copy of the official opinion rendered in the case of Tsakires v. Mesevich, decided by the said Court of Appeals on the 21st day of Janu-
347 ary, 1943, is in due form and sufficient under the laws of the State of New York and the rules and practice of the said Court of Appeals; that the seal imprinted thereon is the true and genuine seal of the said Court of Appeals, and that the signature of John Ludden, as clerk of said court, appended thereto is the true and genuine signature of said John Ludden, and the signature of E. J. Dimock, as reporter of said court, appended thereto is the true and genuine signature of said E. J. Dimock.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature at the
348 Chambers of said court at the Court of Appeals Hall, in the City of Albany and State of New York on the eighth day of March in the year one thousand nine hundred and forty-three.

IRVING LEHMAN
As Chief Judge of the Court of Appeals of the State of New York.

Opinion of Court of Appeals.

ELIAS TSAKIRES et al., Co-partners Trading under the Name of THE COSMO CAFETERIA, Respondents, *v.* WILLIAM MESEVICH, Individually and as President of the CAFETERIA EMPLOYEES UNION, LOCAL 302, Appellants.

(Decided January 21, 1943.)

APPEAL by defendants from a judgment of the Appellate Division, first department, which affirmed by a divided court a decree of the Supreme Court of the County of Bronx (LEARY, J.), granting a permanent injunction.

Louis B. Boudin and *Irving R. Feinberg* for appellants.

David L. Delman for respondents.

RIPPEY, J. The controlling facts in this case do not substantially or materially differ from those in the case of *Angelos et al.*, against the same defendants, in which a decision is being handed down herewith. (*Angelos* v. *Meserich*, 289 N. Y. 498.) The unlawful conduct of defendants here found to exist is similarly subject to judicial restraint.

The judgment appealed from should be affirmed, with costs.

DESMOND, J. (dissenting). This case is so nearly identical with *Angelos* v. *Meserich*, decided herewith, that it should follow the same course. The judgment should be reversed and the complaint dismissed, with costs.

FINCH, LEWIS and CONWAY, JJ., concur with RIPPEY, J., DESMOND, J., dissents in opinion in which LEHMAN, Ch. J., and LOUGHRAN, J., concur.

Judgment affirmed.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—June 14, 1943

On Petition for Writ of Certiorari to the Court of Appeals of the State of New York

A petition for rehearing having been filed in this case upon the denial of a petition for writ of certiorari;

Upon consideration thereof, it is ordered by this Court that the petition for rehearing be, and the same is hereby, granted.

It is further ordered that the order denying certiorari be, and the same is hereby, vacated; and that the petition for writ of certiorari herein be, and the same is hereby, granted.

It is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.